



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

CAUSE NO. 817 OF 2014

JAMES MBIRIKA AKOYO.....CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF KITUI.....RESPONDENT

Mr. Nanyuki for the Claimant/Applicant

Mr Mwalimu J for the Respondent

RULING

1. The Claimant/Applicant filed a Notice of Motion application on 16th May, 2014 seeking interim orders set out in the Notice of Motion.
2. Interim Orders were granted in terms of prayer 1, 2, 3, 4 thereof pending hearing of this Application inter partes.
3. The Application is founded on the grounds set out in the Notice of Motion and the Supporting Affidavit of the Claimant/Applicant sworn on 15th May 2014.
4. The Respondent filed a replying affidavit to that Application sworn by Mr Stanlus Musyoka Nyamai the County Secretary in the County Government of Kitui. The Respondent has further filed a memorandum of reply to the memorandum of claim filed on 16th May, 2014.

Facts of the Case

5. The Claimant was transferred to the Municipal Council of Kitui as Planner II on 3rd December, 2012 and worked continuously until March 2013. During this period he was promoted to Planning Officer.
6. The Claimant had previously served Ministry of Local Government from 22nd October, 2007 at Municipal Council of Mombasa as Planning Assistant I and Municipal Council of Muranga as Planner II.
7. On 24th April 2014 Claimant reported for duty as usual but was prevented from accessing his office by the Respondent's security guards under instructions of the Chief Officer Land Infrastructure and Urban Development.
8. The Claimant wrote to the Respondent's Secretary to seek reasons for the happening but the letter was not responded to. The claimant instructed his advocates to demand the reason for the lock out and the

Advocate wrote a demand letter on 5th May, 2014. To date no response was received.

9. The Respondent published in the Standard Newspaper of 29/4/2014 a notice to the public that the claimant was not authorized to transact any business on behalf of the Respondent.

10. The Claimant moved to court on 16th May 2014 to forestall the eminent unlawful termination of his employment.

11. **Issues for determination**

(i) Has the Claimant established a *prima facie* case with a probability of success to warrant confirmation of the interim orders pending the hearing and determination of the suit?

(ii) Is the claimant likely to suffer irreparable loss incapable of being remedied by way of damages?

(iii) Where does the balance of convenience lie?

12. From the papers filed in the matter and the submissions by the parties it is apparent that the Employment of the claimant, a long standing public officer was about to be abruptly put to an end by the action of the Respondent without being subjected to any due process in terms of section 41 of the Employment Act, 2007 and/or any other Internal Procedure that precede disciplinary action.

16. The Claimant has established a *prima facie* case that he has a legitimate grievance against the Respondent and has in the circumstance established a *prima facie* case with a probability of success.

17. It is very difficult in the circumstances of this country to secure a job in the public sector especially after a termination of employment by a public employer has taken place on allegations of impropriety no matter how ill founded. The Claimant has prospects of long public service and an award of damages would not mend in a meaningful way loss of employment at this early stage of his employment.

18. The balance of convenience is in favour of issuing a conservatory order to preserve the employment of the Claimant/Applicant, only subject to a lawful and fair termination of the employment by the employer.

19. These are matters yet to be considered and will be determined upon hearing the main suit.

20. The Court grants the following orders:

(i) The Respondent is restrained either through itself or its agents, employees or servants, from dismissing, suspending, laying off, sacking or in any other way terminating the Claimant's employment until the hearing and determination of the main suit.

(ii) The Respondent is equally restrained from withholding the Claimant's salaries, dues or benefits in full or part thereof until the hearing and determination of the main suit.

22. The main suit will take its normal course.

Costs in the cause.

Dated and Delivered at Nairobi this 15th day of May 2015

MATHEWS N. NDUMA

PRINCIPAL JUDGE