REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NUMBER 1958 OF 2014

BROWN TSUMA MUKANDA…….…….....….
CLAIMANT

VERSUS

THE NATIONAL GENDER AND EQUALITYCOMMISSION……..
…….....RESPONDENT

RULING

1. The applicant herein seeks an order of injunction against the respondent restraining the latter from receiving and if it has received, from considering and processing or further processing my application for employment to the post of procurement officer pending the hearing and determination of the claimants/applicants herein.

2. The applicant further seeks an order of injunction restraining the respondent implementing the decision of the respondent dated 6th October, 2014 terminating the applicant's services pending the hearing and determination of the main claim.

3. According to the claimant he was hired on 23rd November, 2012 for a period of 5 years. His services were terminated on 6th October, 2014 for what he considered 'without just reasons'. He unsuccessfully appealed against the dismissal and complained that the appeal was heard by the same body who heard the notice to show cause. This according to the applicant was contrary to the human resource manual of the respondent.

4. According to the claimant, he was issued with a warning letter on 10th July, 2014 which according to him was to remain in force for six months as per the respondent's human resource manual. No third warning letter was issued to him.

5. The applicant in his affidavit in support of the application does not appeal to disclose or challenge the reason for his dismissal. His main complaint is that he was dismissed shortly after being issued with the second warning letter and that the respondent ought to have issued him with a 3rd warning letter prior to dismissing him. This seems to be the gravamen of his counsel's submissions before the Court.

6. The respondent on the other hand has stated that the decision to terminate the claimant's employment was based on grounds that he altered records of the tender documents and proceedings which actions amounted to negligence of his professional duties. The respondent further stated that the applicant was not faulting the disciplinary process.According to the respondent's counsel, due procedure of termination as laid out in the NGEC Act was strictly adhered to and the claimant given a hearing in accordance with section 41 of the Employment Act which requires that an employee be given a hearing

before his employment is terminated.

7. This is an interlocutory injunction application and the principles for granting such applications generally are now more or less settled. In employment cases however, the Court ought to be a little bit more cautious in granting interlocutory injunctions especially where an employee has been dismissed by the time the action is brought to Court. That is not to say interlocutory injunctions cannot be in a proper case, be granted where an employee has already been dismissed. To say so would open a pandoras box where sharp employers would be quick to dismiss knowing they cannot be injuncted. To issue an injunction post-dismissal requires compelling circumstances. The applicant in such a case needs to demonstrate that the dismissal was in gross violation of the contract employment, the Employment Act and rules of natural justice generally.

8. I have perused the memorandum of claim filed by the applicant and noted that one of his prayers is damages for breach of contract of employment and violation of his rights and dignity. This means damages can be quantified and awarded to him as compensation for termination of his services.

9. One of the tests applied by Court in deciding whether to grant or refuse an interlocutory injunction is whether damages would be an adequate remedy if the claim ultimately succeeds. This is not to say that simply because damages are quantifiable and may be considered adequate the Court cannot issue an interlocutory injunction. It will be issued where the balance of convenience leans more towards granting than refusing it even if damages would turn out to be an adequate remedy at the conclusion of full trial.

10. Employment relationship is a personal relationship. The traditional view has been that it would be awkward to compel two unwilling parties to continue in it. Lord Denning MR in the case of **Hill v. Persons (1972) chD 305** observed that in granting injunctions the Court would have to be satisfied that trust and confidence still existed between the parties and that damages would not be an adequate remedy.

11. In this particular case the Court is not persuaded that the claimant has demonstrated that if successful damages would not be an adequate remedy. In the circumstances the Court declines to grant the orders sought with the consequence that the application is dismissed with costs.

12. It is so ordered.

Dated at Nairobi this 7th day of May 2015

Abuodha J. N.

Judge

Delivered this 7th day of May 2015

In the presence of:-

……for the Claimant and

……for the Respondent.

Abuodha J. N.

Judge