



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 202 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 25th June, 2015)

ABDI MOHAMUD HASSANAPPLICANT

VERSUS

NATIONAL LAND COMMISSION1ST RESPONDENT

THE HON. ATTORNEY GENERAL2ND RESPONDENT

RULING

1. The application before this court is the one dated 17/2/2015. The application was filed by the Applicant herein and brought through a Notice of Memorandum dated even date under Order 51 Rule 1 of the Civil Procedure Rules, 2010, Section 5(2), (3), 7, 35, 36, 43 and 45 of the Employment Act, Cap 226 Laws of Kenya and all other enabling Provisions of the Law and Procedure.
2. The Applicant seeks orders:
 1. **THAT this Honourable Court be pleased to certify this Application as urgent and the same be heard ex-parte in the first instance.**
 2. **THAT pending the hearing and determination of this Application this Honourable Court be and hereby pleased to suspend the execution of the Show Cause letter dated 10th February, 2015, issued against the Claimant/Applicant by the 1st Respondent.**
 3. **THAT pending the hearing and determination of this Application this Honourable Court be and hereby pleased to order the reinstatement of the Claimant's/Applicant's salary in the sum of Kshs.226,130/=, medical insurance cover, allowances and other employment benefits until further orders of this Honourable Court with effect from January, 2015, begin the date the 1st Respondent withdrew the same.**
 4. **THAT upon hearing and determination of this Application this Honourable Court be and hereby pleased to set aside the Show Cause letter dated 10th February, 2015, issued against the Claimant/Applicant by the 1st Respondent and reinstatement of the Claimant's salary in the sum of Kshs.226,130/=, medical insurance cover, benefits and allowances with effect from January, 2015, begin the date the 1st Respondent withdrew the same.**
 5. **THAT the cost of this Application be borne by the 1st Respondent.**
3. The application is based on the following grounds:

- a. ***That the 1st Respondent has issued a Show Cause letter dated 10th February, 2015, to the Claimant requiring the Claimant to Show Cause why his employment should not be terminated allegedly on grounds of absence from duty.***
- b. ***That the Show Cause letter dated 10th February, 2015, is an afterthought, illegal and unprocedural as the said letter was issued long after the Claimant's monthly salary, medical insurance cover, benefits and other allowances had been withdrawn by the 1st Respondent before giving the Claimant an opportunity to defend himself against any allegations.***
- c. ***That from the foregoing, the 1st Respondent had already punished the claimant unfairly by the time it was issuing a Show Cause letter, an act that is in breach of contract and abuse of due process.***
- d. ***That unless interim orders are issued, the Claimant is at the risk of losing his job through an unfair disciplinary mechanism perpetuated by the 1st Respondent.***
- e. ***That it is in the interest of justice that the prayers sought be granted.***

4. This application is also supported by the annexed affidavit of Abdi Mohamud Hassan.

5. The Applicant's main contention is that the Respondents stopped his salary prior to the show cause letter on 15/1/2015 without any warning or notice. Prior to this suspension, the Claimant had been working in Nyeri and had written to 1st Respondent seeking for a transfer to Nairobi or Kiambu County. There was no response to that request until the show cause letter was issued on 10/2/2015.

6. The Applicant contends that by the Respondent withholding his salary, they have already terminated his services. He therefore seeks orders as prayed.

7. The Respondents were served with this application but to date they have not filed any response. When the application came up for hearing inter partes on 25/5/2015, they just indicated that the negotiations they had been pursuing had collapsed and asked court to make a ruling on merit.

8. I have considered the averments before me. The only issue to determine at this point is whether the Claimant has established a prima facie case to warrant issuance of orders sought.

9. On the face of it, the Respondents have not explained why they have withdrawn Claimant's salary without any notice or warning or even before institution of any disciplinary process against him. This is irregular and offends the provisions of Article 47 of the Constitution and rules of natural justice on a right to be heard.

10. I therefore find that his application has merit and I find for the Applicant and issue orders in terms of prayer 2 and 3.

11. This order will in no way preclude the Respondent from issuing fresh notices against the application following due process.

Read in open Court this 25th day of June, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Musungu for Claimant Applicant – Present

No appearance Respondent