



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 165 OF 2015**

**MICHAEL NJOROGE MUGO**

**CLAIMANT**

**v**

**LAIKIPIA UNIVERSITY**

**RESPONDENT**

**RULING**

1. Michael Njoroge Mugo (applicant) sued Laikipia University (Respondent) on 5 June 2015 and he stated the issues in dispute as
  1. Wrongful dismissal of the Claimant from employment by the Respondent.
  2. Respondent's failure to follow the laid down procedure in the disciplinary process.
  3. Respondent's failure to accord the Claimant a fair hearing.
2. Together with the Memorandum of Claim, the applicant filed a motion under certificate of urgency seeking
  - 1.....
  2. THAT this honourable court be pleased to stay the Claimants/Applicants dismissal from employment as per letter dated 12<sup>th</sup> May, 2015 and to order that the Claimant/Applicant do proceed with his duties pending the hearing and determination of this application.
  3. THAT pending the hearing and determination of this application this honourable court be pleased to restrain the Respondent by itself, agents and or servants from implementing the contents of the dismissal letter dated 12<sup>th</sup> May 2015.
  4. THAT a mandatory order do issue directing the Respondent, its servants, agents and those working under it for the reinstatement of the claimant to his employment, position with full salary and benefits pending the hearing and determination of the claim.
  5. THAT this honourable court do issue a conservatory order restraining the Respondent from enforcing the terms of the dismissal letter dated 12<sup>th</sup> May, 2015 until hearing and determination of this suit.

6. ....

3. The Court certified the motion urgent and directed that it be served for *inter partes* hearing on 17 June 2015.
4. The Respondent filed a replying affidavit on 15 June 2015 sworn by its Registrar J.K. Kairu. This prompted the applicant and he sought and was granted leave to file a further affidavit which he did on 26 June 2015.
5. The Respondent filed a further replying affidavit on 29 June 2015 and the motion was eventually taken on 2 July 2015 and ruling was reserved to today.
6. Before discussing the motion a brief background.
7. The applicant had attempted in Nakuru Cause No. 38 of 2015, *Michael Njoroge Mugo v Laikipia University Council & 2 Ors* to stop the disciplinary process which had been commenced against him.
8. In a ruling delivered on 17 April 2015 and reported as *Michael Njoroge Mugo v Laikipia University Council & 2 Ors* (2015) eKLR, the Court dismissed the motion and discussed circumstances in which it could intervene to stop the disciplinary process.
9. The disciplinary process thus proceeded and it culminated in the dismissal of the applicant on 12 May 2015 hence the present Cause.
10. The applicant opened his submissions by stating that he was seeking orders 4 and 5 as outlined in the motion. The Court has set out the same in paragraph 2 hereinabove.
11. Orders 2 and 3 in the motion were seeking to preserve or protect the applicant's rights pending hearing *inter partes*, he had already been dismissed. Logically, when the orders were not granted at the *ex parte* stage, they became spent.
12. Order 4 of the motion is seeking a mandatory order compelling the Respondent to reinstate the applicant.
13. The legal principles on the grant of mandatory orders at an interlocutory stage are many and need no restatement. An applicant must show exceptional circumstances.
14. There was no attempt to demonstrate any exceptional circumstance in the case under consideration. Showing a *prima facie* case is not sufficient.
15. Further, the common law and section 49(4)(d) of the Employment Act, 2007 frown upon granting of specific performance in employment contracts. Issuing a mandatory order would result in an order of specific performance before hearing the merit of the parties' respective cases.
16. The applicant also seeks reinstatement.
17. Reinstatement was not always available in employment relationships under the common law and employment law in Kenya until the advent of the Employment Act, 2007.
18. Reinstatement is now one of the primary remedies where the Court reaches a conclusion that there was unfair termination of employment or wrongful dismissal. But it is a discretionary remedy.
19. Pursuant to section 49(3) as read with section 50 of the Employment Act, 2007, reinstatement is a final remedy available only after the Court has found a termination of employment/wrongful dismissal unfair.
20. Therefore as a general principle, flowing from the statutory scheme, the Court must hear both sides on the complaint before making a finding as to whether reinstatement is an appropriate and effective remedy.
21. Such a finding cannot be made on the papers and at an interlocutory stage.
22. The applicant also sought a conservatory order. Conservatory orders belong to a different realm of law and are not merited in the instant case.
23. For the above reasons, the Court declines to exercise its discretion in favour of the applicant.
24. Should the applicant demonstrate that the dismissal was unfair and depending on the circumstances of his case, the Court may as well order reinstatement. But he must wait for a hearing on the merits.
25. The motion dated 5 June 2015 is thus dismissed with an order that costs be in the cause.
26. The Court further directs that
  - i. the applicant to file and serve witness statements and any other documents before 14 August 2015.
  - ii. Respondent to file and serve Response, witness statements and documents to be relied on before 31 August 2015.

iii. Hearing date to be fixed when diary for 2016 is opened.

**Delivered, dated and signed in Nakuru on this 31<sup>st</sup> day of July 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant Mr. Kahiga instructed by Mirugi Kariuki & Co. Advocates

For Respondent Mr. Mukira instructed by Mwangi, Mukira & Co. Advocates

Court Assistant Nixon