



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 540 OF 2015
ALEXANDER NJAU CHEGE CLAIMANT
VERSUS
ABT ASSOCICATES INC RESPONDENT

Mrs. Njoroge for Claimant

Mr. Omulama for Respondent

RULING

1. Application dated 2nd April, 2015, was brought under a Certificate of Urgency, seeking inter alia, for orders –
2. That pending the hearing and determination of this Application, the Respondent be and is hereby restrained by an order of this court from summarily dismissing the Claimant from the employment or issuing him with a termination letter or any such other adverse acts connected therewith.
3. The Application is based on grounds set out on the face of the Notice of Motion that the Respondent has unfairly, maliciously, falsely, unjustly and/or irregularly implicated the Claimant in purported insubordination with the sole intention of unfairly dismissing him from employment.
4. That the Respondent has denied the Claimant a fair hearing to defend himself and all correspondence received from the Claimant in response to the accusations levelled against him has been wantonly disregarded by the Respondent.
5. The Application was accompanied by a Statement of Claim restating these facts. No disciplinary action had been taken against the Claimant by the time he filed this suit.
6. As a matter of fact, the Claimant seeks anticipated remedies in the event he is summarily dismissed.

Replying Affidavit

7. The Respondent has through the Replying Affidavit of Purity Gichuru, the Deputy Chief of Party operations of the Respondent stated that, it is the Respondent's intention to proceed with a disciplinary hearing against the Claimant for misconduct and insubordination.
8. That the Claimant has been furnished with a charge sheet dated 26th March, 2015, following a notice to show cause dated 4th March, 2015 given to the Claimant.
9. That the Claimant attended a disciplinary hearing and only a verdict on the matter was awaited when he rushed to court to forestall the outcome.

Determination

- 10.The court has considered the submissions by the parties and notes that, this is an attempt by an employee to drag the court to the shop floor.
- 11.The court has stated time and again that, it would interfere with the prerogative of an employer to manage its human resources only in exceptional circumstances.
- 12.Matters of discipline falls squarely within the purview of the employer as guided by the internal instruments/manuals, developed for that purpose.
- 13.The Claimant has not demonstrated that there is in existence, an internal instrument/manual at his workplace which has not been followed by the Respondent in the intended disciplinary process.
- 14.The Claimant was issued with a notice to show cause; he responded to the same; the claimant attended a disciplinary hearing but wants to injunct the outcome.
- 15.No *prima face case* has been established to warrant the court to grant an injunction pending the outcome of an anticipatory suit.
- 16.The court expects that the Respondent will look into the issues at hand justly and arrive at a fair outcome.
- 17.In the event the Claimant is aggrieved by the final decision of the employer, he is at liberty to approach the court. Otherwise, the anticipatory suit filed before the event will be to no avail.
- 18.The Application is dismissed with costs.

Dated and Delivered at Nairobi this 21st day of August, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE