



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1614 OF 2015

PETER MBUTHIA GITAU.....CLAIMANT/APPLICANT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT

RULING

1. On 16th September, 2015 Lady Justice Mbaru upon hearing the Motion dated 16th September, 2015 brought under certificate of urgency ordered among others that, pending the hearing and determination of the claim herein the respondent do pay the applicant his salary arrears and allowance from February, 2013 to date and to continue so paying until final determination of the claim.
2. On 24th September, 2015 the respondent filed a counter application, seeking the discharge of the orders made by Justice Mbaru on 16th September, 2015 contending the orders were made in contravention of paragraph 16(8) (b) of the Industrial Court rules and could not issue at the interlocutory stage. The respondent further complained that Justice Mbaru's orders had the effect of predetermining the dispute at interlocutory stage without giving the respondent an opportunity to be heard. The respondent further complained that it would be prejudicial to the respondent to pay the claimant if he is eventually found culpable at the conclusion of the disciplinary process.
3. The claimant herein was on 12th February, 2013 accused of responsibility for loss of some 1,000 log books which was his duty to account for. He was consequently suspended in accordance with the respondents code of regulations and further asked to show cause in writing why disciplinary action should not be taken against him. The claimant on 21st February, 2013 gave his explanation in writing but to date has neither received any response in writing or invitation to attend a disciplinary hearing as provided by the respondent's code of regulations.
4. Mr. Kibunja for the claimant submitted that the respondent's Code of Regulations provide for procedure on suspension and that under clause 11 of the code of regulations, disciplinary cases are to be disposed of as expeditiously as possible. Counsel therefore submitted that keeping the claimant's case pending for 2 years was grossly unfair and inordinate.
5. Ms. Sanga for the respondent submitted that the orders by Justice Mbaru determined the claim finally without hearing the respondent. According to Counsel, under the new code of regulations an employee on suspension gets house allowance and other allowances but not salary.
6. Counsel further submitted that the nature of the accusations involved in-depth investigations

including the police. This has caused delay due to the complexity involved. Counsel further submitted that the delay has been occasioned by the composition of the Disciplinary Committee which due to the nature of work involved have not met frequently to deal with staff disciplinary issues.

7. The issues in both the applications by the claimant turn around the length of time it has taken before concluding the investigations over the accusations against the claimant. From the claimants view point which the Court fully appreciates, the respondent has taken inordinately long to finalise the matter to enable him know his fate hence in his view there was need to pay him his salary for the period he has been on suspension and thereafter. The respondent on the other hand contends that if the payment is made, it stands prejudiced if it is finally found that the claimant was culpable and dismissed.

8. The respondents code of regulations provides that an employee on suspension only gets house allowance and medical cover /allowances but not salary. This Court cannot question that. However under clause 11(6), disciplinary cases shall be disposed of as expeditiously as possible in the circumstances. An employee on suspension is obviously anxious to know his or her fate because they are still in the service of the employer though suspended. They may not be able to seek alternative employment easily hence the need to decide cases touching on them expeditiously. Two and half years is inordinately long time to take on suspension especially given the claimant made continuous inquiry over when his fate would be known including issuance of a demand letter by his advocate to which the respondent never responded.

9. This Court has no power to revise or question management policies and discretion over staff discipline provided the same are carried out as per the existing code of regulations and rules of natural justice generally. The respondent's code of regulations deprives an employee on suspension of his or her salary therefore this Court is unable to order to the contrary.

10. The claimant was accused of omissions and commissions at his work-place. There must have been reasonable grounds for these accusations. He gave his version of the events and is awaiting a formal appearance before a disciplinary committee where hopefully he will be given an opportunity to defend himself. The Court cannot interfere with this process however the respondent has an obligation to expeditiously dispose of staff disciplinary cases as inordinate delay amounts to unfair administrative process and a violation of the rights of the employee affected.

11. The Court therefore orders that the respondent do hear and determine the claimant's disciplinary issue forthwith in any event not more than 30 days from the date of this order.

12. Second, the orders of Lady Justice Mbaru made on 16th September, 2015 directing payment of claimants' salary arrears and allowances from February, 2013 to date and continuance of such payment until final determination of the claim are hereby discharged.

13. Thirdly, the further application by the claimant dated 7th October, 2015 seeking stoppage of disciplinary committee hearing set for 9th October, 2015 is hereby disallowed summarily in view of the comments made above in this ruling.

14. Further, this cause will stand stayed pending the outcome of the disciplinary hearing against the claimant.

15. Fifth, the parties shall be at liberty to fix the matter for mention for directions before any Judge once the outcome of the disciplinary hearing is known.

16. It is so ordered.

Dated at Nairobi this 9th day of October 2015

Abuodha J. N.

Judge

Delivered this 9th day of October 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge