

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 592 OF 2013

BETWEEN

NILAN NYOTA MIREMBO CLAIMANT

VERSUS

NAIROBI CITY COUNTY.....RESPONDENT

RULING

1. The Claimant filed an application dated 26th April 2013. She was the Acting Director of Education of the Respondent, until 22nd April 2013, when the Respondent summarily dismissed her. She approached the Court under certificate of urgency, seeking orders for interim reinstatement, and injunction barring the Respondent from interfering with her job, pending the outcome of the dispute.

2. The Parties' Advocates agreed to have the application disposed of by way of the Parties' Affidavits and Submissions on record. Upon careful consideration of those Affidavits and Submissions, as well as various decisions made in the past by this Court on interim reinstatement, the *Court Finds:-*

- i. Reinstatement is ordinarily a substantive remedy. It is not intended to be granted as a provisional measure. It is a remedy under Section 49 of the Employment Act 2007, granted upon finding termination to be unfair;
- ii. The Respondent has acted within its managerial prerogative in suspending and dismissing of the Claimant. The Court must not unduly interfere with that prerogative.
- iii. The remedies of reinstatement, re-engagement without loss of salaries, benefits, privileges and seniority as well as the remedy of monetary compensation are available to the Claimant after the full hearing. The balance of convenience inclines in favour of the employer in the circumstances.
- iv. The decision of Hon. Justice Ongaya in ***Industrial Court Cause Number 562 of 2012 between Shankar Saklani v. DHL Global Forwarding*** does not deal with interim reinstatement. The Court gave remedies to the Claimant in that decision after full consideration of the evidence.
- v. The prayer for reinstatement is premature, and the prayer for injunctive reliefs unwarranted. *IT IS ORDERED-*
 - a. ***The Application dated 26th April 2013 is rejected.***
 - b. ***The Claimant shall schedule the main dispute for hearing.***
 - c. ***Costs in the Cause.***

Dated and delivered at Nairobi this 21st day of January 2014.

James Rika

Judge