



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 76 OF 2014

JULIUS KIPKETER RUGUT CLAIMANT

VERSUS

ELGON VIEW COLLEGE LIMITED RESPONDENT

RULING

1. On 24th January 2014 the claimant filed application under Notice of Motion seeking for restraining orders against the respondent from replacing his position until hearing of the matter, a reinstatement and payment of salaries and other arrears. The respondent filed a reply to this application sworn by Japheth Morara Anassi and dated 10th February 2014. On 12th February 2014, the respondent filed their application for review of the orders made pursuant to the claimant's application dated 24th January 2014. On 24th February 2014 the court directed both parties to file their written submissions with regard to both applications. Only the respondent filed their written submissions.

2. In the claimant's application dated 24th January 2014, brought under the provisions of Order 51 rule 1 of the Civil procedure Rules and section 3A and 5 of the Civil procedure Act seeking for orders that the claimant's position with the respondent not be replaced and that he be reinstated pending hearing of his claim and that his unpaid salaries from August 2013 to January 2014 be paid together with his leave allowance and other benefits he was entitled to. This application is supported by the claimant's affidavit and on the grounds that in July 2013 the claimant was unfairly terminated without notice or hearing, his position was advertised and if his position is filled this will be detrimental and thus the respondent should be stopped.

3. In his affidavit, the claimant state that he was employed by the respondent in July 2010 as a lecturer until July 2013 when he was unfairly terminated. On 30th January 2012 the respondent opened a branch in Kabarnet and called it Mosop Institute of Technology where he was deployed but in May 2013 he was redeployed to the main college in Elgonview College. His salary was however stopped and efforts to have it paid together with other benefits have borne no fruits and thus seek the orders sought.

4. In reply, the respondent in the affidavit of Japheth Morara Anassi state that the claimant was an employee of Mosot Institute of Technology and not the respondent and thus cannot pay, reinstate or fail to replace the claimant as he was not their employee. That the claimant ceased being their employee and his position filled up and since they are a learning institution, teaching had to go on when the claimant took up a new job with Mosop Institute of Technology from 30th January 2012. That the respondent and Mosop Institute of Technology are two separate entities and the claimant left the respondent in July 2013. The respondent further state that they have no position to which the claimant can be reinstated and there was no unfair termination, the claimant commenced work with a new employer and was never re-employed by themselves. The application should be dismissed.

5. On 12th February 2014 the respondent herein filed their application under Rule 32 of the Industrial Court Rules seeking review orders with regard to orders made on 31st January 2014 requiring the respondents to pay the claimant salaries for August to December 2013 and January 2014 on the basis that the respondent was condemned unheard, the hearing dates were never brought to their attention and even where there was notification, the same was too short to comply with. Fairness requires each party be given a fair chance to be heard. The orders were prejudicial to the respondent as the claimant is no longer their employee who has since left to join another employer after he was rendered redundant by the respondent.

6. This application is supported by the annexed affidavit of Japheth Morara Anassi and on the grounds of the memoranda in support of the application noting that the respondent was notified of the orders herein on 31st January 2014 which had a hearing date on the same date with orders that were prejudicial to them. The claimant ceased being their employee in January 2012 under Mosop Institute of Technology and therefore has no claim against the respondent. Under Mosop Institute of Technology, the claimant was rendered redundant after it closed down and the respondent should not be made to pay for a third party. That the orders of 30th January 2014 should be set aside to allow the respondent give their defence and be heard.

7. The claimant in his affidavit in support of his application has attached annexure “JKR3” an *Appointment to the Position of Deputy Principal* with Mosop Institute of Technology. This document is dated 30th January 2012 and was to run for three years. There is also “JKR2” a document from the respondent on *Faculty and Administrative Changes* and at (1);

The Dean of students Mr. Rugut Julius is hereby promoted to the position of Deputy Principal in charge of Kabarnet Campus which is a new Campus for Elgon View.

8. However a keen analysis of “JKR3” the new appointment as stated does not link the two documents in any way. Was this an error or omission on the part of the respondent or the claimant? These are matter that cannot be addressed in this application as the same require evidence on the intensions of the parties and what each party understood the two documents to entail. To decide the issues in the interim would be to deny the respondent a chance to offer their explanation as well as deny the claimant the chance to outline as to how he arrived at the new appointment with Mosop Institute of Technology without having his rights with the respondent outlined in the new appointment. Why did the claimant continue to demand for his August Salary outlined in his letter dated 9th September 2013 “JKR5”? These are answers that can only be addressed at a full hearing and efforts to answer them herein would be to jump to unsupported conclusion based on affidavit evidence.

In view of the two application dated 24th January 2014 and the application dated 12th February 2014 I make the following orders;

- a. **Orders dated 30th January 2014 are hereby set aside;**
- b. **Parties to take a hearing date for the main course from the registry;**
- c. **Each party will bear their won costs.**

Delivered in open Court at Nairobi and dated this 4th Day of June 2014

Mbaru

JUDGE

In the presence of

Court Assistant: Lilian Njenga

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