

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 447 OF 2014

AHMED SHEIKH MOHAMMED..... CLAIMANT/APPLICANT

VERSUS

GARISSA WATER & SWERAGE COMPANY...RESPONDENT

RULING

1. The Application before me is one dated 21st March 2014 and seeking orders in terms of the Notice of Motion. The prayers the Claimant/Applicant sought were mainly orders seeking the restraint of the Respondent from conducting recruitment to fill in the Claimant/Applicant's position of Internal Auditor, an order of release of the Claimant/Applicant's salary from July 2013 to March 2014 and interim stay of the Respondent's letter suspending the Claimant. The Application was supported by the Claimant's Affidavit sworn on 20th March 2014. The Affidavit in support annexed some documents such as the letter of appointment, the payslip, the letter of suspension and the advertisement in the local dailies advertising his position.
2. The Respondent opposed the Application and on 26th May 2014 filed a Replying Affidavit sworn by Mr. Abdi Haji the Managing Director of the Respondent. In the Replying Affidavit the MD deposed that the Claimant/Applicant had failed to conduct his duties diligently and severally absconded duty the highlight being his absence during the week the Directors of Audit from Embu were visiting the Respondent. He deposed that the Claimant/Applicant was severally warned verbally and in writing. The Claimant/Applicant was accused of playing computer games instead of working. The deponent attached copies of the letters issued as warning and the invitation to a formal disciplinary hearing.
3. The Application was urged by Mr. Ongicho for the Claimant while Mr. Chenge appeared for the Respondent. Mr Ongicho submitted that the Claimant wanted the Respondent restrained from appointing another internal auditor. He submitted that the Respondent admitted on deposition that the Claimant's services have not been terminated as the Board is yet to deliberate on the termination. He sought that the Claimant be paid his salaries from date of suspension until the Board makes a determination of the decision to suspend the Claimant.
4. The Respondent was opposed. Mr. Chonge appeared for the Respondent and submitted that the suspension should be upheld for the reason that the Claimant was suspended for various reasons enumerated in the letters annexed. He submitted that the Claimant was suspended for good cause as the Claimant had been unable to discharge duties as expected. He stated that the Respondent had been barred by the Court from appointing another internal auditor and was unable to meet some of its obligations. He thus sought the lifting of the orders granted.
5. In a case such as this, the provisions that govern the discipline of a public servant come into play. Under the Public Service Commission of Kenya Discipline Manual 2008 there is provision under Clause 10(d) thereof. The Manual which would be applicable to all public service employees in the counties before the Counties pass legislation to that effect provides as follows:-

10 (d) A public officer who is on suspension shall be entitled to be paid house, medical and other

allowances as may be applicable.

6. Quite clearly the Case before me would entail some compensation accruing each month to the Claimant. The Manual provides for payment of house, medical and other allowances as may be applicable. The Claimant it has been submitted has been suspended without any pay since 10th July 2013. This is in contravention of the applicable regulations. The principle aim of such pay is to ensure the staff under suspension is not so disadvantaged that he fails to meet his or her obligations. It also acts as a caveat against the employer from an indefinite period of suspension because after the resolution of the matter the staff concerned would be entitled to receive all the unpaid salary and allowances from date of suspension to the date of the lifting of the suspension. I direct that in order to ensure that there is adherence to the regulations and the law, the Claimant shall be paid half salary from the date of suspension until he is either cleared or dismissed by the Board of the Respondent. In the interim, there is nothing to bar the Respondent from engaging the services of an interim auditor provided the Board is permitted to appoint such a staff member. It is inconceivable that the Claimant was the only person in his department but if indeed he was then the Respondent may be well advised to seek authority to second an official from the National Audit office to facilitate the preparation of audits where necessary.
7. As the substantial part of the claim will have to be determined in due course, the parties will be at liberty to take dates on priority basis at the Registry.
8. Regarding the costs of the Claimant's Notice of Motion Application, the costs will be in the cause.

Orders accordingly.

Dated and delivered at Nairobi this 3rd day of June 2014

Nzioki wa Makau

JUDGE