



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU
PETITION NO. 10 OF 2014

HEZRON MUKOKO SILUNYA.....PETITIONER

-VERSUS-

TEACHERS SERVICE COMMISSION.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 31st July, 2014)

RULING

The petitioner, Hezron Mukoko Silunya filed a Notice of Motion under Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Articles 35, 41, 47 and 50 of the Constitution of Kenya, 2010. The substantive prayer was that the honourable court be pleased to lift or halt the interdiction of the petitioner as contained in the letter dated 14.3.2014 and proceeds to order the petitioner to continue in employment contract and the law pending the hearing and determination of the application in the first instance and thereafter, pending the hearing and determination of the petition.

The applicant further prayed that the court grants any further relief as it deems fit.

The grounds in support of the application were that the petitioner has a *prima facie* arguable case; and that interim orders as prayed for were necessary to halt the continuing breach of fundamental rights and freedoms.

The respondent opposed the application by filing the replying affidavit of Simon Musyimi Kavisi, the respondent's Director in charge of Administration at the Teachers Service Commission Headquarters stationed in Nairobi.

The claimant's case is that he was interdicted by the respondent's County Director, Uasin Gishu County without being accorded due procedural fairness. At paragraph 18 of the replying affidavit, the respondent states that the County Director evaluated the circumstances of the case and reached the decision to interdict the petitioner for material breach of the fundamental provisions of the Code of Regulations for teachers.

The court has considered all the material on record and the submissions made for the parties. At this interlocutory stage, the respondent has not established the delegated or imposed functions to the County Director to interdict and further has not established the statutory or administrative safeguards that the

County Director was to comply with in interdicting the petitioner.

The court has also considered the gravity of the allegations as levelled against the petitioner by the respondent namely, that the petitioner was of immoral behaviour in view of alleged sexual relationship with a girl who is also his student at Moi Girls High School, Eldoret.

Taking the balance of justice and convenience into account, it is the court's opinion that the parties shall maintain the *status quo* as of today pending the hearing and determination of the petition which shall be fixed for hearing on priority basis.

In conclusion, the petitioner's application by the notice of motion dated 11.6.2014 is determined with orders:

1. The parties to maintain the status quo as of today pending the hearing and determination of the petition on priority basis.
2. The parties are invited to fix the hearing date for the petition.
3. The costs of the application shall be in the cause.

Signed, dated and delivered in court at Nakuru this Thursday, 31st July, 2014.

BYRAM ONGAYA

JUDGE