



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 737 OF 2014

GEOFFREY MACHARIA WAIRIMU CLAIMANT

VERSUS

PRIVATE SAFARIS (EA) LIMITED RESPONDENT

Mr. Wachakana for the Claimant / Applicant

Mr. Fraser for the Respondent

RULING

1. By a notice of motion on a certificate of urgency dated 6th May 2014 and filed on same date, the Applicant seeks an order in the following terms;

(ii) That, pending hearing and determination of this claim a temporary injunction be issued restraining the Respondent, its servants or agents, advocates or auctioneers or any other person acting on its behalf from doing the following acts or any of them, that is to say from terminating his contract of employment as a Chief Accountant, initiating disciplinary action, stopping his salaries or allowances or otherwise howsoever interfering with the said Claimant's employment in any manner whatsoever as a Chief Accountant of the respondent Company.

2. The Application is premised on grounds set out in the Notice of motion and supported by an Affidavit of Geoffrey Macharia Wairimu, the Applicant.

3. A memorandum of claim was simultaneously filed with the Application seeking a permanent injunction stopping the Respondent from conducting disciplinary process against the Claimant and a declaration that the disciplinary process initiated against the Claimant is unlawful, unlesal, arbitrary, illegal and in breach of the terms and conditions of service, the Employment Act and null and void.

4. The application is opposed and a replying Affidavit by one Frank Glettenberg, the Chief Executive of the Respondent dated 23rd May 2014 was filed on the same date.

5. It is admitted that the Claimant was the Chief Accountant of the Respondent, employed on 7th May 2007 on terms and conditions set out in a letter dated 20th April 2007. Currently, the

Claimant earns a monthly salary of Kshs.125,000/=.

6. The Respondent deposes that between 16th October 2012 and 26th February 2014, instructions were issued from the Accounts department of the Respondent to the Respondent's bankers Citibank Kenya, for 81 payments to be made from the Respondent's bank account to Little Farm Produce. The total value on those payments was Kshs.104,660,512/=.

7. The Claimant authorized 19 and released 18 of the payment instructions to the Respondent's bank.

8. The Respondent had no business relationship with Little Farm Produce and no moneys were due from the Respondent to Little Farm Produce.

9. A search at the registry of Business Names has revealed that the Claimant is the sole proprietor of Little Farm Produce.

10. On 3rd March 2014, the Respondent sent the Claimant on compulsory leave while investigating these transactions.

The investigation revealed that there were sufficient and reasonable grounds to suspect that the Claimant had committed a criminal offence to the substantial detriment of the Respondent's property and the Claimant had in the alternative been grossly negligent in the conduct of his work.

11. A disciplinary process was scheduled to take place on 2nd May 2014 in terms of **Section 41(1)** of the **Employment Act, 2007** but the Claimant did not attend the hearing. Meanwhile the Claimant was charged with a criminal offence before the Chief Magistrate's Court at Nairobi in **Criminal Case No. 330/14** which is pending hearing and determination.

12. That notwithstanding, the Respondent intends to conclude the disciplinary process whereas the Claimant invites the Court to declare the process unlawful and injunct the same pending the hearing of the main suit.

13. In the Industrial Court at Nairobi, **Cause No. 2192 of 2012 Dennis Nyagaka Ratemo Vs. Re Kenya Film Commission and Another, Hon. Rika J.** while rejecting a similar application had this to say:

“The Respondent if the orders are granted would be deprived of the right to administer the contract of employment, and have the right to manage its business severely infringed by the Court on the basis of *prima facie* facts.

This is the reason why this Court has consistently declined to issue provisional measures that have the effect of prejudging the propriety of the employer's disciplinary process and decision.”

The Court could not agree more with the reasoning and the finding of Rika J.

The Application is accordingly dismissed and cost be in the cause.

Dated and Delivered at Nairobi this 25th day of July, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE

