



**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 456 OF 2014**

**JARED ODHIAMBO OKONJO**

**CLAIMANT**

**v**

**NAKURU TOWN WEST CONSTITUENCY**

**DEVELOPMENT FUND COMMITTEE (CDFC) 1<sup>st</sup> RESPONDENT**

**THE CHIEF EXECUTIVE OFFICER,**

**CONSTITUENCY DEVELOPMENT FUND**

**BOARD**

**2<sup>nd</sup> RESPONDENT**

**RULING**

1. The Claimant filed a Memorandum of Claim against the Respondents on 30 September 2014, stating the issues in dispute as
  - i. Unfair termination
  - ii. 15% house allowance and
  - iii. Annual leave.
2. The Claimant in the Memorandum of Claim pleaded that he had been appointed as an Accountant on 1 July 2013 by the 1<sup>st</sup> Respondent and that on 14 June 2014, the Personal Assistant to the Member of National Assembly for Nakuru West told him to go home and that on 15 June 2014 when he visited the Member of the National Assembly at his home, he directed him to leave. On 16 June 2014, he was stopped by a security guard from accessing the CDF offices and was informed the Honourable Member had given strict instructions that he should not be allowed into the offices.
3. At the same time, the Claimant filed a motion under certificate of urgency seeking one substantive order

*2. THAT pending the full hearing and determination of the claim filed herein, the Respondents do pay or cause to be paid to the Claimant/Applicant half of his monthly salary back dated from the Month of July, 2014 till full hearing and determination of the claim on merits.*

4. The Court certified the motion urgent and fixed *inter partes* hearing for 9 October 2014. The motion was served but could not be heard on 9 October 2014 because the 1<sup>st</sup> Respondent sought

more time to file a replying affidavit and the 2<sup>nd</sup> Respondent had filed a Preliminary Objection. The Court directed that the motion and the Preliminary Objection to be taken on 27 October 2014.

### **Claimant's submissions**

5. The Claimant submitted that the methodology of his termination was unknown to law and that no reasons were given for his termination and that the termination was vindictive and the termination should be treated as a suspension.

### **1<sup>st</sup> Respondent's submissions**

6. The 1<sup>st</sup> Respondent submitted that the motion was not brought under any known law and was superfluous and that the order sought in the Motion was not sought in the main suit.
7. It was further submitted that if the termination was unfair, there was a remedy provided by law.
8. The 1<sup>st</sup> Respondent further submitted that by dint of section 49(3) of the CDF Act, the Claimant should have referred the dispute to the 2<sup>nd</sup> Respondent in the first instance. The Claimant had failed to exhaust the dispute resolution mechanisms set out in the CDF Act.

### **2<sup>nd</sup> Respondent's submissions**

9. The 2<sup>nd</sup> Respondent also opposed the motion. It was submitted that the Claimant was not an employee of the 2<sup>nd</sup> Respondent and that the Claimant dragged the 2<sup>nd</sup> Respondent to Court unnecessarily.
10. It was further submitted that the motion was bad and unknown in law and that the CDF Act has provided for mandatory dispute resolution mechanisms.

### **Claimant's reply**

11. In a brief reply, the Claimant submitted that the 2<sup>nd</sup> Respondent was the principal of the 1<sup>st</sup> Respondent and that section 49 of the CDF Act did not apply to employment disputes like the instant dispute.
12. It was further submitted that the 2<sup>nd</sup> Respondent had failed to respond to a demand letter by the Claimant and that the Claimant had a legitimate expectation to half salary.

### **Evaluation**

13. Section 41 of the Employment Act protects employees from unprocedurally unfair termination of services. Section 45 of the Act on the other hand protects employees from termination without fair and valid reasons.
14. Section 49 of the Act on its part provides for the remedies where the Court finds that there was unfair termination or wrongful dismissal. The primary remedies are *compensation* of not more than twelve months gross wages, *reinstatement* (without loss of benefits) and or *reengagement*.
15. The primary labour statutes have not provided for any remedy of payment of half salary pending hearing of a complaint of unfair termination. Such a remedy therefore must be founded either on contract or equity.
16. Some employment relationships with a statutory underpinning provide for half pay during *interdiction* or *suspension*. Those statutory provisions are not of a general application and the Claimant did not anchor his case on any such statute.
17. The Claimant's case is that his termination was unfair. It is not a challenge of interdiction or suspension. He is seeking half salary pending determination of his complaint that the termination was unfair. He has not laid any statutory basis for the order or remedy sought in the interim.
18. The Claimant equally has not demonstrated any contractual basis for the order sought. He is not working for the 1<sup>st</sup> Respondent any more. It is not known at this stage whether the Court would find in his favour. If he were to lose, issues of refunding the wages may possibly lead to a counter

- suit for refund.
19. The Court was not referred to any principle or rule of equity which would aid the case of the Claimant at this interlocutory stage. The Claimant's services having been terminated, whether unfairly or not, will have to be determined after hearing the Cause on the merits.
  20. The statute has provided clear remedies were the Court to find unfair termination.
  21. The order sought by the Claimant clearly does not lie.
  22. Before concluding one more issue. The order sought by the Claimant is not anchored in the substantive suit. It is sought in *vacuo*. On that ground also, I would have applied the principle stated by Ringera J (as he then was) in *Kihara v Barclays Bank of Kenya Ltd* (2001) 2 EA 420 (CAK) that interlocutory injunctive relief should be anchored in a substantive suit.
  23. Because of the conclusion reached, it is not necessary to discuss the other issues raised by the Respondents.

### **Conclusion and Orders**

24. Considering the above discussion, the Court finds and holds that the motion dated 29 September 2014 lacks merit and dismisses it with costs to the Respondents.

**Delivered, dated and signed in open Court in Nakuru on this 28<sup>th</sup> day of November 2014.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Ochang' instructed by Ochang' Ajigo & Co. Advocates

For 1<sup>st</sup> Respondent Mr. Mongeri instructed by Mongeri & Co. Advocates

For 2<sup>nd</sup> Respondent Mr. Githiru instructed by Githiru & Co. Advocates