



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1540 of 2012

IBRAHIM MOMANYI OKERI..... CLAIMANT

-VERSUS-

KENYA FORESTRY RESEARCH INSTITUTE.....RESPONDENT

RULING

By Notice of Motion dated 3rd September 2012 and filed in Court on 4th September 2012 under Certificate of Urgency, the Claimant seeks the following orders:-a) This application be certified as urgent and service of the same be dispensed within the first instance.

b) Leave be granted to the Claimant to be heard during the current Industrial Court vacation.

c) The Respondent be restrained by an order of interim injunction from receiving applications for the position of Chief Internal Auditor of the Respondent, from prospective applicants, as advertised, or in any manner whatsoever interviewing, recruiting and/or filing in the said position until hearing of this application inter-partes.

d) The Respondent be restrained by an order of injunction from receiving applications for recruitment for the position of Chief Internal Auditor of the Respondent from prospective applicants as advertised or in any manner

The application is supported by the affidavit of the Claimant sworn on 3rd September 2012. The application was heard ex-parte on 5th September when the Court granted orders in the following terms:-

1. **THAT** the application is certified urgent and heard ex-parte in the first instance.
2. **THAT** leave is granted for the application to be heard during the current Court vacation.
3. **THAT** the Respondent is restrained from recruiting and/of filing the position of Chief Internal Auditor until 12th September when the application herein will be heard inter partes.
4. **THAT** the application be served upon the Respondent forthwith.
5. **THAT** the Respondent files their replying affidavit or grounds of opposition on or before 11th September 2012.

The application was fixed for hearing inter partes on 12th September 2012 when the Court was not

sitting. The case was mentioned on 20th September 2012 when the Court directed the respondent to file its replying affidavit and fixed the hearing date of the application on 8th October 2012. When the parties came to Court on 8th October 2012 they agreed to dispose of the application by way of written submissions.

I have read the pleadings and the written submissions. The substantive orders being sought by the Claimant in the application is an injunction restraining the Respondent from receiving applications for recruitment for the position of Chief Internal Auditor of the Respondent from prospective applicants as advertised or in any manner whatsoever interviewing, recruiting and/or filling in the said position until the hearing and determination of the claim, and that costs of the application be provided for.

The circumstances under which temporary injunctions may be granted are well set out in the case of **GIELLA VS CASSMAN BROWN [1973] E.A. 358**. An applicant seeking grant of injunction must satisfy the following test:-

1. An applicant must show a prima facie case with probability of success;
2. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury.
3. When the Court is in doubt, it will decide the application on a balance of convenience.

The Claimant has not shown in his application or in the submissions how he will be affected should the injunction not be granted. I have also noted that the prayer in the application is the same as prayer 2 in the main claim.

The Claimants case is that he is entitled to be confirmed to the position of Chief Internal Auditor of the Respondent by virtue of a circular dated 17th August 2004. The said circular was addressed to the Permanent Secretary, Ministry of Finance, Nairobi. It is copied to the Secretary, Public Service Commission. The Claimant has not explained how a circular addressed to the Permanent Secretary, Ministry of Finance should be binding on the Respondent.

Another issue that has not been explained is why the Claimant is seeking implementation of a circular dated 17th August 2004 in a case filed on 31st August 2012, 8 years after the circular was issued.

The 3rd issue which has not been explained is why the Claimant has not stated his qualifications so that the Court can determine if he is really qualified for the job. All these are issues that create doubt as to whether the Claimant has a prima facie case with probability of success.

The Claimant has also not demonstrated that if the orders sought are not granted he will suffer irreparable harm that cannot be compensated by way of damages.

This therefore leaves me with only one test, that of the balance of convenience. No reason has been given by the Claimant why the balance of convenience should tilt in his favour. The Claimant has not demonstrated that he is entitled to conversion to the new grading structure. The circular at page 2 in Paragraph 4 under the heading “conversion to the new grading structure” states as follows:-

“Officers who are members of the Scheme of Service for Internal Auditors will convert to the new designations as follows

The Claimant has not shown that he was “a member of the Scheme of Service for Internal Auditors at the time the circular was released.

For the foregoing reasons I dismiss the application. There shall be no orders as to costs.

Orders accordingly.

Read in open Court and signed on this 14th day of March 2013.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

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Ibrahim Momanyi Okeri

In the presence of:- _____ Claimant

No appearance for the

_____ Respondent