



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 928 OF 2013

BETWEEN

FESTUS KYALO MUTHIANI.....CLAIMANT

VERSUS

KENYATTA NATIONAL HOSPITAL.....RESPONDENT

Rika J

CC. Mr. Kidemi

Ms. Mokeira holding brief for Mr. Solonka instructed by Solonka & Company Advocates for the Claimant

Ms. Osoro instructed by Mulondo, Oundo, Muriuki & Company Advocates for the Respondent

RULING

1. The Claimant filed an application dated 18th June 2013 seeking the following Orders:-
 - a. The Respondent be restrained by way of temporary injunction from carrying out interviews and/or employing any person to the position of Chief Security Office Job Group K6 as advertised in a local daily newspaper dated 29th May 2013 and or any other subsequent advertisement pending hearing and determination of the application.
 - b. The Respondent be restrained by way of a temporary injunction from terminating the Claimant's employment pending hearing and determination of the Claim.
 - c. The Respondent be directed to reinstate the Claimant pending hearing and determination of the Claim.
 - d. The Honourable Court be pleased to grant any other relief that it may deem fit and just.
2. The Advocates for the respective parties agreed on 30th July 2013 to have the application disposed of by way of written submissions.
3. The Claimant subsequently filed his submissions on 16th August 2013, and the Respondent did so on 17th September 2013. The dispute was mentioned on 17th September 2013, when the Court advised the parties, the ruling would be read on notice.

The Court Finds and Orders:-

4. The Claimant's contract of employment had already been terminated at the time of filing the Claim. He had indeed lodged appeal against the decision with the employer, which appeal was rejected. There is no basis to issue an injunction restraining the Respondent from carrying out an act that is completed.

5. There are no provisions under the Employment Act 2007, or the Industrial Court Act 2011, which enable the Court to issue orders for provisional reinstatement. Reinstatement of an employee is ordinarily a final and substantive remedy, not an interim relief.

6. The hiring of a new Chief Security Officer is the prerogative of the Employer. The Court would be interfering unreasonably with the exercise of that prerogative by restraining the Respondent from recruiting.

7. Ultimately, the Claimant should pursue his claim for compensation or reinstatement as particularized in the Statement of Claim dated 18th June 2013. These remain unaffected by any actions the Respondent may be engaged in, which the Claimant appears to think would be fatal to the remedies sought. Neither compensation, nor reinstatement is undermined by the fact of the Claimant being out of employment in the pendency of the dispute, or by the filling up of the position of Chief Security Officer.

IT IS ORDERED:-

- a. ***The application dated 18th June 2013 is rejected.***
- b. ***Parties to schedule the main Claim for hearing.***

Dated and delivered at Nairobi this 20th day of December 2013

James Rika

Judge