



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 38 OF 2015

MICHAEL NJOROGE MUGO

CLAIMANT

v

LAIKIPIA UNIVERSITY COUNCIL

1st RESPONDENT

PROF. FRANCIS K. LELO

2nd RESPONDENT

THE HON. ATTORNEY GENERAL

3rd RESPONDENT

RULING

1. Michael Njoroge Mugo (applicant) filed a Memorandum of Claim against Laikipia University Council (1st Respondent), Prof. Francis K. Lelo (2nd Respondent) and the Honourable the Attorney General (3rd Respondent) on 16 February 2015 seeking *a declaration that the interdiction of his employment was unlawful, illegal thus null and void*, reinstatement and release of unpaid salaries.

2. Together with the Memorandum of Claim, the Claimant filed a motion under urgency seeking various injunctive reliefs.

3. The 1st and 2nd Respondents entered appearance on 25 February 2015, and at the same time filed a replying affidavit sworn by the 2nd Respondent.

4. The Claimant subsequently filed an Amended Notice of Motion on 26 February 2015 seeking

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2. THAT this honorable court be pleased to stay the suspension as per the letter of interdiction dated 2nd February, 2015 and the applicant do proceed with his duties pending the hearing and determination of the suit.

3. THAT this honorable court do issue restraining orders against the 1st, 2nd, and 3rd respondents, their agents, servants and anybody claiming through them from harassing, intimidating, threatening, investigating, dismissing, interdicting,

discussing, passing a decision and in any other way interfering with the claimant's employment until hearing and determination of this application.

4. THAT this honorable court do issue restraining orders against the 1st, 2nd and 3rd respondents, their agents, servants and anybody claiming through them from convening, organizing meetings to discuss and in particular if any decision made in regard to the letter dated 2nd February, 2015 and or in any other way interfering with the claimant's employment until hearing and determination of this suit.

5. THAT cost of this application be provided for.

5. The motion as amended was argued on 27 February 2015.

Claimant's case/submissions on the motion

6. The Claimant's case is that he was interdicted by the 1st Respondent's Vice Chancellor (2nd Respondent) through a letter dated 2 February 2015, while clause 5:2 of the Collective Bargaining Agreement entered into between the Inter Public University Councils Consultative Forum of the Federation of Kenya Employers and the Universities Non-Teaching Staff Union (UNTESU) provided that it was the Principal/Registrar (Administration) of the 1st Respondent who had the authority to suspend or interdict an employee (the Claimant).

7. According to the Claimant, the 2nd Respondent had no authority to interdict him and therefore the interdiction was unlawful and illegal.

8. He further contends that his right to natural justice and due process were limited and or diminished.

9. The Claimant submitted that the 2nd Respondent sits on the Appeals Disciplinary Committee and that therefore there was a likelihood of bias on his (2nd Respondent's) part were he to appeal against any disciplinary action.

Respondents' case/submissions

10. The 2nd Respondent in the replying affidavit deposed that he interdicted the applicant after consulting the 1st Respondent's Management and that the Claimant was given 7 days from date of interdiction to show cause why disciplinary action should not be taken against him, and further that the Human Resources Management Committee of the University Council had disciplinary control of employees in the Claimant's grade.

11. After hearing the parties' submissions on 27 February 2015, the Court stopped the disciplinary process against the applicant pending delivery of this ruling.

Evaluation

12. Order 3 of the motion as worded was meant to protect the status quo pending an inter partes hearing and were the order to be granted it would have subsisted until 27 February 2015. The order was included in the Amended Motion filed on 26 February 2015 while the motion was heard the next day. This prayer has been overtaken by events and the substantive orders pending are in prayers 2 and 4 of the Amended Motion.

13. The present motion raises a legal question on whether and under what circumstances the Court can intervene with/in a disciplinary process commenced by an employer before it is completed or a final decision has been taken.

14. The applicant seeks the Court's intervention to stop the contemplated disciplinary process on the grounds that he was interdicted by an unauthorised officer and that any appeal may be compromised on the basis that the officer who interdicted him sits on the Appeals Disciplinary Committee.

15. This Court has recently dealt with this issue in the cases of *Peter Opiyo Mc'Odero v Laikipia University* (2015) eKLR and *Kenya Plantation & Agricultural Workers Union v Finlays Horticulture Kenya Ltd* (2015) eKLR.

16. In the *Finlays* case, after reviewing several authorities, this Court held that

From the authorities, it is clear that the Court has the jurisdiction to intervene in a disciplinary process, but such intervention must be in very exceptional cases where compelling reasons have been given to justify the Court's intervention. The compelling reasons would include the fact that grave injustice would be occasioned to the employee and that the employee had no alternative means of attaining justice or remedies.

17. The applicant has not shown any compelling reasons or proved that he will suffer grave injustice were the process started by the 1st Respondent proceed to its logical conclusion or that he has no effective and appropriate remedies including reinstatement were the Respondents to inflict sanctions on him without compliance with the law and contractual provisions.

18. In the *Mc'Odero* case, the Court while discussing the very same clause relied on by the applicant herein observed that the said clause 5:2 of the Collective Bargaining Agreement should not be given a mechanistic interpretation (see paragraph 18 and 19 of the decision).

19. On the issue of bias, the applicant did not disclose the membership of the Appeals Committee his appeal would lie to or whether the 2nd Respondent was/is a member of such Appeals Committee.

20. In the circumstances, there is no material to reach a conclusion of bias on the part of the 2nd Respondent as regards due process or prejudice the applicant is likely to suffer.

21. The Court has also considered that granting the orders sought by the applicant will most likely dispose of the main Cause before it is heard on the merits.

Conclusion and Orders

22. From the foregoing, the Court finds that the applicant has not satisfied the test for grant of temporary injunctive relief and dismisses the motion with costs to the Respondents.

Delivered, dated and signed in Nakuru on this 17th day of April 2015.

Radido Stephen

Judge

Appearances

For applicant

Ms. Alwala instructed by Githui & Co. Advocates

For 1st and 2nd Respondent

Mr. Mukira instructed by Mwangi Mukira & Co. Advocates

For 3rd Respondent

Mr. Kirui, Litigation Counsel, Office of the Attorney General

Nixon Raiback

Court Assistant



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