



Principles of a Reinstatement Order

By Geoffrey E. Odongo



Many employees who feel that they have been unfairly terminated will often ask the court to order that they be reinstated. Reinstatement means that the employee is restored to the same position he held, or a substantially similar position, prior to termination of employment with full pay and other benefits.

Under Section 49(3) of the Employment Act, where an employee's termination is found to have been unfair, the court may recommend to the employer to reinstate or a re-engage the employee at the same wage. In doing so, the employer must treat the employee in all respects as if the employee's employment had not been terminated.

When making an order for reinstatement, the general rule is that there should be no order for specific performance in a contract of service except in very exceptional circumstances. Another

important factor to be considered is the practicability of having an employee reinstated. Below are the principles applicable to a reinstatement order as laid out in *Aggrey Lukorito Wasike vs. KPLC [2016] eKLR*:

1 It is self-executory

This means that a reinstatement order takes effect immediately and is only subject to the terms imposed in the order itself. One does not have to go through the usual execution procedures.

2 The employer is bound to comply

The employer is bound to allow the employee to resume duty and to pay full salary and other due benefits from date of reinstatement and to continue paying until the lawful termination of

the employment or until the date the reinstatement order is reviewed or reversed.

3 It ends upon review or reversal

If the Court that made the order reviews it or an order of an appellate court reverses the order, the employer's duty to pay the reinstated employee effectively stops and the employer is no longer required to retain the employee who had been reinstated in continued actual service.

4 The employee is still entitled to payment where the employer fails to comply

If the employer refuses to let the employee to resume duty, the employer is liable to pay the employee's salary from the date of reinstatement and to continue paying until the lawful termination of the employment or until review or reversal of the order.

5 Where the order is reviewed or reversed, the employee is not required to reimburse salary paid

Where the order is reviewed or reversed the employee is not required to return the salary or the pay that he received prior to the review or reversal of the reinstatement order.

6 The employee is entitled to be paid during the pendency of appeal or an application for review

If upon an order for reinstatement and before review or reversal, an employer refuses to allow the employee to resume work, the employee will still recover the salaries or wages for that period despite review or reversal of the order. This is unless the delay by the employer to comply with the reinstatement order pending appeal or review was not due to the employer's unjustified action or omission or, the employee for unjustified action or omission, failed to resume work as per the order of reinstatement.

