EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs CN Ochieng	**v**	**The Commissioning Board of Governors of Stantonbury Campus**

Heard at: Cambridge **On:** 2 & 3 November 2017

Before: Employment Judge D Moore

Members: Mr M Reuby and Mrs K Charman

Appearances

For the Claimant: Mr S Onyango (Husband)
For the Respondent: Ms E Gordon Walker (Counsel)

JUDGMENT

1. This claim is struck out in its entirety.

2. There being no application for costs we make no order.

REASONS

1. This case has been listed before us at the conclusion of four consolidated cases brought by this claimant against this respondent to hear the respondent's application to strike out. It has been the claimant's practice to issue a fresh claim prior to the preceding one being heard. That has resulted inconsiderable delay. We were not disposed to consolidate this claim since that would have made it necessary to yet again vacate the hearing of the earlier matters.

2. We have concurred with the respondent's contention that this claim contains two complaints. Mr Onyango has been given the opportunity to identify any others that he contends are set out in the claim form. He has

been reminded (as indeed he has been reminded in the course of the hearing of the other four claims):-

(i) That it is necessary for claimant to set out the specific acts complained of on the claim form;

(ii) That the facts of those complaints must be set out with sufficient clarity to inform a reasonable respondent of the case that they have to meet; and

(iii) That we only have jurisdiction to consider specific complaints set out in the aforementioned manner. (Ali v Office of National Statistics (2005) IRLR 201 CA). He has

3. The first of those two complaints is one which the claimant has raised annually. She is from Kenya and in order to remain and work in the UK she requires sponsorship from an employer. The respondent is such a sponsor and they operate under a statutory scheme. The claimant seeks to argue (again) that there is an implied term in her contract of employment that she should always have her sponsorship renewed for the maximum term. The particular renewal that she complains of in this complaint is February 2016. At that particular time she had been absent from work continuously since the 10 December 2012, a period of four years. The respondents raised the matter with the relevant authorities and were instructed to only renew sponsorship for a period that would cover the likely period during which the claimant would continue to be employed by them. Given the length of her absence it is within the band of reasonableness for an employer to be aware of the prospect of terminating the employment on grounds of capability. Whilst they hoped for a return to work at the conclusion of these cases it was far from certain that the claimant would do so and the respondent rightly recognised that it would be contrary to their statutory obligations to extend the sponsorship for five years as the claimant wanted. We have had the matter argued before us in the substantive hearing, there is no basis for the claimant's contention that there was an implied term in her contract that all renewals would be for five years and in any event the respondent's obligations in respect of sponsorship are not contractual. We dismissed this complaint in respect of the earlier renewal, this matter rests on the same legal and factual averments and we dismiss it on the ground that it has no reasonable prospect of success.

4. The second matter relates to a grievance the claimant submitted in May 2015 and the attendant process. This featured in the fourth of the claimant's claims and it related to a previous refusal to extend her sponsorship for five years during her absence from work was struck out by Employment Judge Adamson at a preliminary hearing in July 2015 on the ground that it was vexatious. The claimant unsuccessfully appealed that decision to the Employment Appeal Tribunal and Employment Judge Adamson's decision was upheld. Employment Judge Adamson

found (applying Attorney General v Barker FLR 759) that the claim had little or no basis in law or no discernable basis).

5. The principle of Res Judicata operates to prevent issues between the same parties being litigated again once they have been the subject of Judgment. As we have noted above Employment Judge Adamson did address the merits of this particular complaint and found it to have little or no basis in law. The EAT considered it by way of appeal and upheld the Judgment striking it out. This complaint is struck out on that ground. We note also that we ourselves have determined necessary ingredients of the point (namely the fact that there is no basis for implying a term entitling the claimant to sponsorship for the maximum term of five years when absent from the sponsored work for a long period and that the respondent was under a duty to only extend for a shorter period) and on this basis the claim would also fall to be dismissed on the ground that it had no reasonable prospect of success. Accordingly this claim is dismissed in its entirety.

6. This is a claim which had no reasonable prospect of success. By virtue of Rule 76(1)b of the Employment Tribunal Rules 2013 we are obliged to consider making an order for costs and indeed we are satisfied that the grounds for so doing exist. However we have discretion as to whether to make that order and on the basis that the respondent has chosen not to pursue costs we make no order.

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Employment Judge D Moore

Date: 12/12/2017

Sent to the parties on: .....

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For the Tribunal Office