



Kimili v Kenya Building, Construction, Timber and Furniture Industries Employees Union (Cause 1324 of 2012) [2012] KEHC 970 (KLR) (16 November 2012) (Ruling)

PAUL MAREKYA KIMILI V KENYA BUILDING, CONSTRUCTION, TIMBER AND FURNITURE INDUSTRIES EMPLOYEES UNION[2012]eKLR

Neutral citation: [2012] KEHC 970 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CAUSE 1324 OF 2012
ON MAKAU, J
NOVEMBER 16, 2012**

BETWEEN

PAUL MAREKYA KIMILI CLAIMANT

AND

KENYA BUILDING, CONSTRUCTION, TIMBER AND FURNITURE INDUSTRIES EMPLOYEES UNION RESPONDENT

RULING

1. The Claimant has brought the Notice of Motion dated 6-8-2012 seeking basically:-
 - (a) Order of injunction to prohibit or stop the National Secretary General of the Respondent from interfering with the activities and the programs of lawfully and duly elected officials of the Nairobi Branch of the Respondent Union.
 - (b) Order that the Secretary of the Nairobi Branch do continue to serve in his capacity as an elected official until the dispute is heard and determined.
2. I did not see any affidavit supporting the Motion but I saw on record only a verifying affidavit. The application is opposed by the Respondent who has filed a replying affidavit sworn by Francis K. Murage, the National Secretary General of the Respondent Union.
3. The Application was argued on 10-10-2012 by Mr. Enonda and Ms. Guserwa, counsel for the Applicant and Respondent respectively.
4. The gist of the application is that the applicant was removed from office irregularly by a meeting held on 9-6-2012 wherein he was not invited. That the procedure for removal of an officer from office as



provided for under Rule 7 was not followed. The said provision requires for a disciplinary hearing by the Secretary General and the decision of the Central Council.

5. Consequently, Mr. Enonda submitted that wrongful removal from office of a lawfully elected officer constituted prima facie case. He relied on *Giella Vs Cassman Brown Case* and further submitted that damage will not be adequate compensation in the long run if injunction is denied. He also submitted that the balance of convenience favoured the applicant. He further submitted that there is no evidence to show that the Applicant was no longer registered as the Branch Secretary for Nairobi Branch of the Respondent.
6. In opposing the application, Ms. Guserwa relied on the replying affidavit by Mr. Francis Murage sworn on 31-8-2012. She conceded that the applicant was duly elected Secretary for Nairobi Branch of the Respondent Union and worked until 9-6-2012 when he was suspended by his Branch due to integrity issues. That before suspension he was invited to the meeting to discuss his integrity but declined to attend.
7. That the suspension made pending final decision on his removal was recommended to the Respondent's Head Office. That the procedure followed was in accordance with Rule 7 and 9 of the Respondent's Constitution. That the applicant has not sued his Branch which suspended him and recommended his removal but instead sued the Head Office which only acted on recommendations.
8. That the application has been overtaken by events as the vacancy has been filled. That the applicant has not shown how the Secretary General has interfered with the Branch Office.
9. She further submitted that the orders sought are not available on interim basis and should be tested on the merits after full hearing. She concluded by submitting that the application has not met the threshold of granting the prayers sought and that the applicant will suffer no irreparable harm because after all he has already been paid his terminal dues in full. She asked me to dismiss the application with costs.
10. I have carefully perused the application, the claim and the replying affidavit. I have also considered the submissions by the learned counsel for the two sides. The issue for determination is whether the application has met the requirements for granting the orders sought. The answer to the above issue lies rule 16(3), (5) and the *Giella Vs Caseman Brown Case*.
11. Rule 16(3) provides that in case where an injunction is sought, a claimant may at any time after commencement of the suit, and irrespective of whether he is seeking compensation, apply for interim or temporary injunction to restrain the respondent from committing breach of contract or an injury complained of. The provision above cited presupposes that, for a claimant to apply for interlocutory injunction, he must have commenced a suit wherein he is seeking injunction. In the present suit no such injunction is prayed for in the claim filed simultaneously with the application for injunction. To that extent, the application fails.
12. Similarly evaluated against the said *Giella Vs Caseman Brown Case*. whether or not the applicant has established a prima facie case with probability of success, the application still fails on the ground that the application still fails on the ground that the applicant will not suffer irreparable harm. The applicant in his claim has made an alternative prayer for a liquidated claim of Kshs.28,000,000/-. What more should I say? Regrettably nothing more.
13. Consequently, I dismiss the application with no order as to costs.
Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF NOVEMBER, 2012.



ONESMUS N. MAKAU
JUDGE

