



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 1120 of 2004**

1. JOHN KIRIMA
2. CHARLES WANDUMO
3. VITALIS A. KODHIAMBO
4. DAVID OYULA
5. JOHN MAKAU
6. ANNA NYAMBURA
7. JOHN ONYANGO
8. KENYA HOTELS AND ALLIED WORKERS UNION.....**PLAINTIFFS/APPLICANTS**

VERSUS

1. CHEZER INVESTMENTS LTD.
2. KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS
AND ALLIED WORKERS (KUDHEIHA)**DEFENDANTS/RESPONDENTS**

RULING

1. The Application, the Prayers & Depositions

The applicants moved the Court by Chamber Summons dated and filed on 21st October, 2004 brought under Order XXXIX rules 2, 2A and 9 of the Civil Procedure Rules; the Trade Unions Act (Cap. 233), the Trade Disputes Act (Cap. 234); and the Employment Act (Cap. 226).

The outstanding prayers in the application are as follows:

- (a) that, the 1st defendant be restrained by way of temporary injunction whether by themselves, their agents or servants, from alienating the running of Boulevard Hotel and/or ceasing of Boulevard Hotel business operations, pending the hearing of this suit;
- (b) that, the 1st defendant be restrained by way of temporary injunction from declaring all their employees at the Boulevard Hotel redundant and/or terminating their services;
- (c) that, the 2nd defendants be restrained by way of temporary injunction from purporting to represent the employees of the 1st defendant as their trade union in matters touching on an intended redundancy and/or termination of services;
- (d) that, the 1st defendant be directed to recognize the 8th plaintiff and engage in deliberations with them before any termination of employment and/or declaration of redundancy, and/or cessation of business operations by the 1st defendant at the Boulevard Hotel can take place;

(e) that, costs of this application be provided for.

The application was supported by the affidavits of **John Kirima**, dated 21st October, 2004 and **Joanes Okotch**, of even date. It is averred in **John Kirima's** affidavit, in summary, as follows:

- (i) that, between January and February, 2004 the 1st seven applicants and all other employees of the 1st defendant were recruited as members of the 8th plaintiff/applicant;
- (ii) that, communication was made by all employees whereupon authority and instructions were given to the 1st defendant to make deductions from their salary and forward monthly subscriptions to the 8th plaintiff trade union;
- (iii) that, the 1st defendant complied with the authority and instructions, and ceased to forward any subscriptions to the 2nd defendant trade union, and ever since then deductions have been made from the employees' wages and forwarded as trade union dues to the 8th plaintiff by check-off system;
- (iv) that, sometime in March, 2004 the 8th plaintiff forwarded a copy of recognition agreement to the 1st defendant for signature, as the 8th plaintiff had already complied with the 51% membership requirement for recognition;
- (v) that, the 1st defendant declined to sign the same, but continued making subscriptions promptly at the end of every month to the 8th plaintiff;
- (vi) that, on **9th October, 2004** at a meeting of the Works Committee of the Boulevard Hotel called by the 1st defendant and attended by the first seven plaintiffs, notification was issued that the 1st defendant would cease its hotel business and so employees would be declared redundant by the **31st of October, 2004**;
- (vii) that, adequate notice was not given to the 8th plaintiff trade union as required; and neither were the 1st defendant's employees given adequate notice;
- (viii) that, the 1st defendant has not complied with the provisions of the laws regarding redundancy;
- (ix) that, the defendants' actions are actuated by bad faith and ill-will against the plaintiffs, and the same would work prejudice against the plaintiffs as well as all the employees of the 1st defendant.

John Kirima, who is the 1st plaintiff, a shopsteward of the 8th plaintiff trade union, and a member of the Works Committee at the Boulevard Hotel, avers that 74 employees of the 1st defendant had joined the 8th plaintiff trade union, through a check-off payment system during the period running from 10th January, 2004 to 18th February, 2004; and thereafter the 1st defendant duly complied and has consistently upheld the agreed check-off system. All the unionisable employees of the 1st defendant are currently members of the 8th plaintiff trade union. The deponent avers that the General Manager of the 1st defendant has written a letter to the 2nd defendant requesting a meeting to deliberate on the matter; but the plaintiffs and the employees of the 1st defendant are not members of the 2nd defendant trade union and have no confidence in the said 2nd defendant.

Joanes Okotch, Secretary-General of the 8th plaintiff trade union, also avers that all unionsable staff of the Boulevard Hotel, run by the 1st defendant, are members of the 8th plaintiff trade union. He avers that the 1st defendant has refused to sign a recognition agreement with the 8th plaintiff trade union to enable the employees to engage in negotiations and collective bargaining. He avers that upon learning of the 1st defendant's intentions of declaring all employees redundant, the 8th plaintiff trade union wrote a letter requesting audience with the 1st defendant. There was no response, save for a subsequent declaration by the General Manager of the 1st defendant, at a meeting held on 14th October, 2004 that (para.10) "*he did not recognise the 8th plaintiff trade union and therefore he could not stand their presence in the meeting.*" The meeting could not continue due to the General Manager's attitude; and it was later learnt that he was communicating only with the defendants, and was intending to hold a meeting with them on 21st October, 2004.

The said General Manager of the 1st defendant, **Jagdish Patel**, swore a replying affidavit in which he avers as follows. He avers that the 1st defendant has been and is a member of the Kenya Association of Hotelkeepers & Caterers; and that the said Association, on behalf of its members, had entered into recognition and collective agreements with the 2nd defendant trade union (which may be referred to in short form as KUDHEIHA), for the purpose of recognising the trade union to represent the interests of the workers, and for the purpose of regulating workers' terms and conditions of employment. **Jagdish Patel** deponed that the 1st respondent, in its operations of hotel business, was bound by the said collective agreements and it has all along implemented and enforced the agreed terms and conditions of employment. He averred that the 1st defendant had not entered into any recognition and/or collective agreements with the 8th plaintiff (Kenya Hotels and Allied Workers Union), and that it had no mandate to individually enter into such agreements by virtue of being a member of the Kenya Association of Hotelkeepers and Caterers. He denies that the 1st defendant has ever been asked to sign a recognition agreement with the 8th plaintiff. He avers that the 1st defendant had applied the check-off system in the past, in favour of the 8th plaintiff, because of the belief that an order from the Minister for Labour in that regard had been served on the Kenya Association of Hotelkeepers & Caterers; but that this belief had now proved to have been unfounded. The deponent places at the door of the 8th plaintiff the failure, to-date, to enter into a recognition or collective agreement on behalf of the 1st defendant's employees. He avers that the 1st defendant's only relationship with the 8th plaintiff is in respect of payments remitted to the 8th plaintiff, on the check-off system; "the terms of employment being enjoyed by the employees of the

company are exclusively regulated by the collective agreement signed between the Kenya Association of Hotelkeepers & Caterers and KUDHEIHA” (2nd defendant).

Jagdish Patel depones that in the course of 2004 the management of the 1st defendant resolved to cease hotel business at Hotel Boulevard by 31st October, 2004 and found another company which was interested in running the said hotel business as a going concern. He avers that during negotiations, the in-coming company gave the condition that it was not willing to take over liabilities of staff dues and employment benefits, and this necessitated the first defendant declaring all the serving staff redundant.

Jagdish Patel avers that the 1st defendant wrote a letter (dated 1st October, 2004) to KUDHEIHA, the Nairobi Provincial Labour Officer, the Kenya Association of Hotelkeepers and Caterers, the Central Organization of Trade Unions, and the Federation of Kenya Employers, notifying each of the 1st defendant’s intention to terminate the employment of its workers by 31st October, 2004 on account of redundancy due to change of management, and further confirming that all the affected employees were to be paid their full terminal benefits. The Secretary-General of KUDHEIHA acknowledged receipt of the redundancy notice, by letter dated 12th October, 2004. It is deponed that, on 9th October, 2004 the management of the 1st defendant held a meeting with the workers’ representatives and informed them of the impending termination of their employment – through redundancy. The deponent avers that, by letter of 16th October, 2004 the management once again communicated individually with all the affected employees to notify them of the terminal benefits which would be paid to them on 31st October, 2004.

Jagdish Patel believes that the terminal benefits payable to the employees under the terms of redundancy contained in the existing collective bargaining agreement are in the best interests of the employees. Unlike under the Employment Act (Cap. 226) which requires a one-month notice to those declared redundant, or one month’s salary in lieu of notice to be given to an employee, the existing collective agreement provides for a maximum of four months notice or four months salary in lieu of notice. He further depones that the eighth plaintiff has no role in regard to the payment of terminal benefits to employees of the 1st defendant, since it has no recognition and collective agreements with the company. He avers that the management of the first defendant has already finalised the calculation of terminal benefits payable to employees on 31st October, 2004.

William Wahome, Secretary-General of the 2nd defendant, also swore (27th October, 2004) and filed (28th October, 2004) a replying affidavit; but this affidavit, for reasons given below, merits being struck out.

There is something misguided about the said affidavit of **William Wahome**. It thus states in paragraph 3:

“That I have read and understood the contents of the Chamber Summons and the Supporting Affidavit herein and have instructions to respond as follows.”

Then the deponent states at paragraph 20:

“That I swear this affidavit in support of my preliminary objection herein and opposing the plaintiffs’ application herein for injunction.”

So, what is the nature and purpose of **William Wahome’s** affidavit? It is intended as a replying affidavit. And it is labelled “*supporting affidavit*”, which would appear erroneous; but now it becomes clear that the affidavit is intended to “*support*” a *preliminary objection*. Indeed, the 2nd defendant did draw up and file a Notice of Preliminary Objection on 28th October, 2004.

As a matter of law there is a serious problem with the two documents filed by the 2nd defendant and I will, for that reason, strike them out for their incurable defects. Learned counsel ought to have appreciated that a preliminary objection, conceptually, is a *pure point of law* which rests on *no evidence*; and the fact that he needed depositions to support his “*preliminary objection*” means that this was not a genuine preliminary objection and it must be expunged. Secondly, the duplicity in the said affidavit, by which at one remove it comes to support a preliminary objection, and at another remove it replies to the applicants’ application, is justification for attributing nullity to it; and so I now strike it out and will make no further reference to it.

John Kirima, the 1st plaintiff, swore a supplementary affidavit on 2nd November, 2004. He avers that the company purported to have stepped into the shoes of the 1st defendant has not been disclosed. It is averred that there had been no objections from the 2nd defendant, when all check-off remittances by the 1st defendant were made to the 8th plaintiff exclusively, all through since January 2004. The deponent avers that a dispute has been registered and is pending with the Minister for Labour, seeking the signing of a recognition agreement between the 8th plaintiff and the 1st defendant. It is averred that the intended redundancy has not yet taken place, as terminal benefits have not yet been paid to any employee. The deponent avers that the 1st defendant has already employed other members of staff to replace its current employees.

On 5th November, 2004 **Jagdish Patel**, the 1st defendant’s General Manager, swore a further affidavit after learned counsel for the applicants had already made his submissions. The plaintiffs had neither the opportunity to speak regarding the propriety of allowing such an affidavit, nor that of responding to the same. Counsel for the plaintiffs opposed the admission of such an affidavit, which he felt, I believe, with justification, to have taken unfair advantage of his earlier submissions. Counsel for the defendants, however, maintained that the new affidavit contained no new information and was in every respect legitimate. Admitting the new affidavit, I thought, would derail the plaintiffs’ submissions already made, as counsel would have to seek leave to file a reply, and then he would have to completely reorganise his submissions. I decided to strike out the new affidavit, and to allow submissions to proceed in its absence.

2. Submissions of Counsel

On the first occasion of hearing, on 3rd November, 2004 *Mr. Nyamu* appeared for the plaintiffs, while *Mr. Warui* and *Mr. Mbugua* appeared for the defendants.

Learned counsel, *Mr. Nyamu* presented the affidavits sworn in support of the applicants' case, and noted in particular the fact that, from the beginning of 2004, the 1st defendant had been making check-off system payments to the 8th plaintiff, on behalf of the 1st defendant's employees; but when the 8th plaintiff forwarded a copy of the recognition agreement for signature, the 1st defendant refused to sign; in consequence of which a dispute was recorded with the Minister for Labour and is still pending.

Counsel submitted that the 1st defendant's attempt to terminate the services of its employees was wrongful, firstly because adequate notice had not been given; and secondly because there was no compliance with redundancy law – which law is found in s.16A of the Employment Act (Cap. 226). It is by that provision specified that a contract of service is not terminated on account of redundancy unless certain conditions are satisfied. Such conditions include notification to government of the extent of intended redundancy — the reason being that redundancy is not normal termination of services and it cannot be negotiated between employer and employee. Counsel prayed for injunctive orders, to enable all parties to deliberate upon the intended redundancy.

Counsel submitted that the 2nd defendant trade union has not been receiving any membership dues from the employees since February, 2004 for the reason that they had withdrawn their membership from the 2nd defendant. Counsel submitted that the workers had a right to change their trade union association, in exercise of their constitutional rights (s.80 of the Constitution). It was submitted that redundancy would determine the fate of an entire work force, and this would necessarily raise questions of public policy and public interest; hence it was essential for the 1st defendant to comply with the law governing redundancies.

Mr. Warui for the 1st defendant contended that as Kenya was an open economy with enough space for the conduct of private enterprise, it was perfectly lawful for the 1st defendant to terminate its hotel business, and thus the decision to discontinue the 1st defendant's hotel business could not be challenged by its employees.

Counsel submitted that the effect of s.2 of the Trade Disputes Act (Cap. 234) read together with s.16 of the Employment Act (Cap. 226) was that there was a prescribed procedure to be followed by an employer when declaring redundancy. He contended that the pertinent procedure had been followed by the 1st defendant: and in this regard notice had been given to the 2nd defendant as the relevant trade union, and to the stakeholders in the labour industry. It was contended that the 1st defendant had calculated terminal benefits for all employees without discrimination, and all leave days due to employees had been commuted to cash; and whereas the Employment Act (Cap.226), s. 16A (1) (e) required a notice period of one month, or one month's wages in lieu of notice for employees declared redundant, the 1st defendant was paying four months' salaries in lieu of notice, this being in accordance with the Collective Bargaining Agreement. Counsel noted that the 1st defendant had complied with the 15 days severance pay requirement which is provided for under s. 16A (1) (f) of the Employment Act.

Counsel submitted that the 1st defendant had terminated the workers' employment in accordance with the contract of employment, and thus the 1st defendant cannot be compelled to reinstate the former employees. It was contended that the Court does not ordinarily grant specific performance over a contract of personal services. In support of this argument, the Court of Appeal decision in *David Magoti v. Kenya Tea Development Authority*, Civil Appeal No. 165 of 1997 was cited. The relevant passage cited was the following:

“It is settled law that if an employer does not wish to continue with the services of an employee the employee cannot seek reinstatement to his job. Such relief as sought by the appellant for reinstatement cannot be granted and is hereby denied.

“It is also settled law that there can be no general damages awarded if the services of an employee are terminated in terms of the contract of employment.”

Counsel submitted that this was not a case in respect of which an injunction could be issued; for, if for any reason there would be a claim in respect of terminal benefits payable to an employee, it could be adequately disposed of through payment of damages.

As regards the existence or non-existence of a recognition agreement between the 1st defendant and the 8th plaintiff, counsel submitted that such an agreement could not be implied, as “*recognition agreement*” was defined under s.2 of the Trade Disputes Act (Cap. 234). Such an agreement had to be in writing between trade union and employer or organization of employers. At the moment, it was submitted, there was a recognition agreement between the 1st defendant and the 2nd defendant, but not between the 1st defendant and the 8th plaintiff. Counsel submitted that today, the 1st defendant is a member of an association of employers of like character, Kenya Association of Hotelkeepers and Caterers, which had signed the recognition agreement with the 1st defendant; and the 1st defendant is bound and cannot enter into a separate recognition agreement with the 8th plaintiff. Counsel submitted that since the 8th plaintiff had already registered a trade dispute, in this matter, in 2003 the matter had to be determined by the *Industrial Court*, and until this took place, an action such as the instant one would be an abuse of the process of the Court. Counsel submitted that while the 8th plaintiff had benefited from the check-off system in respect of the contributions from the 1st defendant's employees, this was irregular, in the absence of a recognition agreement between the 1st defendant and the 8th defendant; and for this argument he sought reliance on s.53 of the Trade Dispute Act (Cap. 234), which set out the conditions of validity of labour agreements.

Mr. Mbugua for the 2nd defendant similarly opposed the plaintiffs' application. It has to be noted that I had, for various reasons, struck out the affidavit of the 2nd defendant; and hence I will only take into account counsel's submissions on pure points of law.

Learned counsel questioned what authority the eight plaintiffs had to bring suit on behalf of the tens of employees of the 1st defendant, when no letter of authority was exhibited as required under Order I, rule 12(2) of the Civil Procedure Rules. Counsel also raised the point that

under Order I rule 8, leave of the Court was required to bring a representative suit. The effect was that the only valid suit on record was, as counsel submitted, that in respect of the 8th plaintiff. In this regard counsel cited the decision in Miscellaneous Application No. 5 of 1993, **Ambrose O. Weda & 13 Others v. The Council of Legal Education**, in support of his argument. The learned Judges in that case, **Bosire and Couldrey, JJ** (as they were), thus stated:

“The application is brought in a representative capacity and is expressed to be brought under O.LIII Civil Procedure Rules. The applicants did not however comply with the provisions of O.I rule 8, Civil Procedure Rules which deals with suits brought in a representative capacity. Consequently we will treat the named 14 applicants as the only applicants in this matter.”

Counsel submitted that the first seven plaintiffs could not stop the 2nd defendant, a registered trade union, from performing statutory duties under the Trade Unions Act (Cap. 233) and the Trade Disputes Act (Cap. 234). It was considered relevant by counsel, in this respect, that the 2nd defendant had entered into a recognition agreement with the 1st defendant — and that this recognition agreement was still in force. Counsel further cited the High Court decision in **Kenya Hotels and Allied Workers Union v. Kenya Association of Hotelkeepers and Caterers & Another**, HCCC No. 652 of 2000 to support the proposition that the Court cannot create a recognition agreement between the 8th plaintiff and the 1st defendant, and that any quest for such a recognition agreement must be conducted within the framework of the Trade Disputes Act (Cap. 234), in respect of which the relevant tribunal was the Industrial Court, provided for under s. 14 of that Act.

Learned counsel contended that the 8th plaintiff’s case would not stand up, under the tests in the authoritative Court of Appeal decision in **Giella v. Cassman Brown & Co. Ltd.** [1973] E.A. 358. It was contended that the 8th defendant would suffer no irreparable damage if the 2nd defendant proceeded to conduct its statutory duties; and that damages would be an adequate compensation. It was contended as well that the balance of convenience did not stand in favour of the 8th plaintiff, as against the 2nd defendant. It was contended that if orders of injunction were granted, then the four months’ salary already calculated for the 1st defendant’s employees, by virtue of the Collective Bargaining Agreement, would no longer be available, as only the Employment Act (Cap. 226), s. 16A would then be applicable and that gives only *one month’s salary* in lieu of notice; and consequently, the members of the 2nd defendant trade union would suffer irreparably. So in this regard, it was submitted, the balance of convenience stood in favour of the 2nd defendant.

Counsel also submitted that in this application for the equitable remedy of injunction the plaintiffs should have given security against damage, since the grant of an injunction could lead to suffering on the part of the 2nd defendant. This point is, with respect, a valid one.

In his reply, counsel for the applicants, **Mr. Nyamu**, submitted that the classical principle that the Court won’t impose an employee on an employer, does not apply here, because what is involved is not a normal termination of employment; the matter transcends the capacities of employer and employee. It is about a *redundancy*, and this expresses itself as a public interest question. Counsel contended that redundancy diminishes employment opportunities for a large number of persons; and so an employer has to explain and justify his inability to pay. A large work force would be affected, with some of the employees having only a few years to retirement; and so their welfare and the lives of their families, would be damnified. Hence it was the spirit of the legislation, that legitimate concerns be registered when redundancy is being proclaimed. Thus, by s. 16A of the Employment Act (Cap. 226), redundancy is not to be declared unless first, certain conditions have been met. The union is to be notified of the reasons and the extent of the intended redundancy.

Learned counsel, **Mr. Nyamu**, submitted that the 2nd defendant ought not to have been involved, in matters relating to the 1st defendant’s workers; because it was estranged from those workers. Counsel argued that it was improper for the defendants to rely on any agreement by the 1st defendant to pay four months’ terminal compensation instead of one; because s. 16A (1) of the Employment Act had not been complied with.

Mr. Nyamu submitted that the 2nd defendant’s recognition agreement with the Kenya Association of Hotelkeepers and Caterers had ceased, as employees of the 1st defendant have disowned the 2nd defendant, and instead attached themselves to the 8th plaintiff.

On the question whether the plaintiffs had any authority to sue and to represent the interests of employees of the 1st defendant, counsel submitted that the relevant consideration was “*whether a trade union can challenge a decision made by the employer of its members*”; and he gave the answer as yes. He submitted that the 8th plaintiff is the trade union that the employees of the 1st defendant has entrusted with all issues touching on their employment. And therefore, counsel submitted, this is a union qualified to go to Court and challenge any decision made by an employer that employs its members. In aid of that argument, counsel cited international legal instruments, such as the Universal Declaration of Human Rights, 1948, the African Charter on Human and Peoples’ Rights, 1981 and the International Covenant on Economic, Social and Cultural Rights, 1966 as dictating that all persons do enjoy their economic, social and cultural rights, and that those rendered jobless are, in effect, denied their rights to a livelihood.

3. Analysis and Final Orders

Counsel for the plaintiffs did not, in my view, effectively respond to the point made for the defendants, that the appearance of the 1st – 7th plaintiffs as representatives of a larger group of employees of the 1st defendant, was not in keeping with the procedure set out in Order I, rule 8 of the Civil Procedure Rules. It is clear both from a reading of rule 8 and from the case law, **notably Ambrose O. Weda & 13 Others v. The Council of Legal Education**, Miscellaneous Application No. 5 of 1993, that no person may bring a representative action without the authority of those represented, and without the Court’s leave. I take it that this is not an ordinary procedure that can be the subject of a waiver. From this position I must hold, and I so do, that the first seven names appearing as plaintiffs, purely as such, could only represent *themselves*, but not the many employees of the 1st defendant.

The second relevant point is whether one or more of the said first seven plaintiffs, joined to the eighth plaintiff trade union, could validly represent the many workers in the employ of the 1st defendant. On this matter I would state that the 8th plaintiff, as a registered trade union,

has proper locus standi in its own capacity as a body corporate by statute law; and so it requires not the joinder on its side of any of the first seven plaintiffs, to be able to proceed with litigation.

It follows that the outcome of this application must turn on the submissions made in respect of the 8th plaintiff; though, of course, it is to be noted that the first seven plaintiffs would quite rightly be representing themselves alone, in the proceedings.

There are two employees' trade unions involved in these proceedings – the 8th plaintiff on one side, and the 2nd defendant on the other side. Both claim to be speaking for the employees of the 1st defendant. The 1st defendant denies this and claims that only the 2nd defendant has the right to speak for the workers. The 2nd defendant says the same. So both are pitted against the 8th plaintiff. The question, who has the upper hand between the two trade unions, is dependent on one factor, *recognition agreement*. This is the agreement which places an employer under obligation to deal with a particular trade union, in solving matters relating to unionised employees (Trade Disputes Act (Cap. 234), s.2).

I think it is undisputed that the recognition agreement in place is that between the 1st and the 2nd defendants. However, this agreement, though binding in form, has not been reflected in membership contributions based on the check-off system. Membership remittances by check-off have, for the last 12 months, been made by the 1st defendant to the 8th plaintiff. It is solely this factor that the 8th plaintiff relies on as the foundation for its case in this application. The 8th plaintiff blames the 1st and the 2nd defendants for not bringing about a recognition agreement between the 1st defendant and the 8th plaintiff. From the standpoint of the Court, this blame has no materiality. If the 8th plaintiff seriously wanted to have the said recognition agreement, it should have pursued the matter with the Industrial Court, set up under the Trade Disputes Act (Cap. 234); but it has not achieved this object.

Therefore, I must find that the 8th plaintiff, even though it was receiving members' remittances through the check-off system, had not replaced the 2nd defendant trade union as a valid interlocutor on labour matters affecting the employees of the 1st defendant.

The gravamen in the suit and in the instant application, is that the 1st defendant is declaring its employees redundant, because it is abandoning hotel business. Whether or not it is doing so in accordance with the law, must await the trial of the main suit. But for now, the plaintiffs seek to restrain the 1st defendant from ceasing to run the hotel business at Hotel Boulevard, pending the hearing of the suit; to restrain the 1st defendant from declaring redundancy of employees.

From the evidence, it is clear that the 1st defendant has gone quite far with the process of cessation of its hotel business, and with the computation of what it regards as terminal payments for workers rendered redundant. Reversing such a course of action is not readily done, and it is to be remembered that this Court does not make orders in vain. If in proceeding as it has done the 1st defendant has been in breach of the law, and it is so determined at the trial of the main suit, appropriate sums of money in damages, no doubt, will be paid. Since that path of redress is clearly in place, the equitable relief of injunction will in the circumstances be inappropriate, and I do not think this Court's discretion should be exercised to give such relief.

That position of principle leads me to make the following orders:

(i) The third prayer in the plaintiffs' Chamber Summons application of 21st October, 2004, that the 1st defendant be restrained by way of temporary injunction from alienating the running of Hotel Boulevard and/or ceasing of Hotel Boulevard business operations pending the hearing of this suit, is refused.

(ii) the fourth prayer, that the 1st defendant be restrained by way of temporary injunction from declaring all their employees at the Hotel Boulevard redundant and/or terminating their services, is refused.

(iii) The fifth prayer, that the 2nd defendant be restrained by way of temporary injunction from purporting to represent the employees of the 1st defendant as their trade union in matters touching on an intended redundancy and termination of services, is refused.

(iv) The sixth prayer, that the 1st defendant be directed to recognize the 8th plaintiff and engage in deliberations with them before any termination of employment or declaration of redundancy or cessation of business operations by the 1st defendant, is refused.

(v) The plaintiffs/applicants shall bear the costs of this application in any event.

Orders accordingly.

DATED and DELIVERED at Nairobi this 11th day of March, 2005.

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court clerk: Mwangi

For the Plaintiffs/Applicants: Mr. Nyamu, instructed by M/s. Nyamu & Nyamu Advocates

For the 1st Defendant/Respondent: Mr. Warui, instructed by M/s. Warui & Co. Advocates;

For the 2nd Defendant/Respondent: Mr. Mbugua, instructed by M/s. Mburu Mbugua & Co. Advocates