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**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NYERI**  
**Civil Appeal 139 of 1996**

**NYERI COUNTY COUNCIL THROUGH CLERK TO THE COUNCIL.....APPELLANT**

**AND**

**KENYA LOCAL GOVERNMENT WORKERS UNION.....RESPONDENT**

**(Appeal from Ruling and Orders of the High Court of Kenya at Nyeri (Osiero, J.) dated 31<sup>st</sup> January, 1996**

**IN**

**H.C.C.C. NO. 13 OF 1996)**

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**JUDGMENT OF THE COURT**

Nyeri County Council (the appellant) is a local authority established under the provisions of the Local Government Act (Cap 265). The appellant had in its employment some 337 nursery school teachers ( the teachers) attached to various nursery schools run by the appellant. These teachers were also members of the Kenya Local Government Workers Union (the respondent), to whom the appellant had extended recognition by entering into a collective bargaining agreement on the terms and conditions of service of service of the members of the respondent which included the teachers.

On 5<sup>th</sup> October, 1995 the Finance Staff and General Purposes Committee of the appellant held a special meeting at which a resolution was passed in these terms-

‘That all those nursery school teachers currently teaching as at 5<sup>th</sup> October, 1995 be handed over to the community.’

Pursuant to this resolution, the appellant on 16<sup>th</sup> October, 1995 or thereabout sent notices to all the teachers affected terminating their appointments and purporting to transfer each one of them to their respective primary/nursery school committees with effect from 15<sup>th</sup> January, 1996. In taking this drastic action against the teachers, the appellant did not consult with the respondent as it was obliged to do under the agreement no as mandatorily required under section 16A(a) of the Employment Act (Cap 226), which provides-

“16A(1) A contract of service shall not be terminated on account of redundancy unless the following conditions have been complied with-

(a) the union of which the employee is a member and the Labour Officer in charge of the area where the employee is employed shall be notified of the reasons for, and the extent of, the intended redundancy.”

As the declaration of redundancy by the appellant clearly breached both the statute and the collective bargaining agreement, the respondent filed a suit in the superior court against the appellant seeking relief limited only to an injunction restraining the appellant from declaring the teachers redundant. An application for a temporary injunction was made under Order 39 r 1 & 2 of the Civil Procedure Rules on 16<sup>th</sup> January, 1996, and this was granted by the Judge on 31<sup>st</sup> January, 1996. The injunction was to be in force pending the resolution of a trade dispute arising out of the purported redundancies which had been reported to the Ministry of Labour under the provisions of the Trade Disputes Act (Cap 234). It is against that decision that the appellant now appeals to this court.

The appellant filed a defence, and apart from the averment that the respondent had no locus standi to bring the suit, raised no plausible defence at all to the claim for injunction. The Industrial Court, which is the statutory tribunal under the Trade Disputes Act, has no jurisdiction to grant an injunction, and the High Court being a court of unlimited jurisdiction, was the appropriate forum to approach in the circumstances. The respondent had the right to bring proceedings on behalf of the teachers as the trade union recognised by the appellant under the terms of the collective bargaining agreement, Trade Disputes Act and the Employment Act.

Finally, Mr. Shichangi also submitted that the order for injunction should never have been made because any possible damage to the teachers could have been adequately compensated by an award of damages. This submission is inconsistent with the reason the appellant had given for seeking to declare the teachers redundant, namely, that it could no longer afford to pay their salaries.

For all these reasons, this appeal fails and is dismissed but we make no order as to costs as the respondent did not appear either in person or by an advocate.

Dated and delivered at Nyeri this 16<sup>th</sup> day of October, 1996.

J. E. GICHERU

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JUDGE OF APPEAL

R. O. KWACH

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL