



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kenya Union of Domestic Hotels Educational Institution and Hospital  
Workers v Board of Management Hema Hospital Ltd Kisii (Cause  
E002 of 2026) [2026] KEELRC 990 (KLR) (22 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 990 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII**  
**CAUSE E002 OF 2026**  
**NZIOKI WA MAKAU, J**  
**APRIL 22, 2026**

**BETWEEN**

**KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTION  
AND HOSPITAL WORKERS ..... CLAIMANT**

**AND**

**BOARD OF MANAGEMENT HEMA HOSPITAL LTD KISII ..... RESPONDENT**

**RULING**

1. The Claimant/Applicant has moved the court by way of an application dated 11<sup>th</sup> February 2026 seeking the following orders:
  1. Spent
  2. That, the Honourable court be pleased to issue an Order directing the Respondent to pay the Claimant's members and or grievants unpaid salary and allowance amounting to Kshs. 20,061,211/- pending hearing and determination of the suit.
  3. That the Honorable court be pleased to issue an Order directing the Respondent not to implement her undated letter to the Ministry of Labour Kisii County received on 12<sup>th</sup> January 2026.
  4. That, the main claim be heard and determined on priority basis.
  5. That the Cost of the Application be provided for by the Respondent.
2. The Application is supported by the affidavit of Hezron Onwong'a, the Applicant's Chief Industrial Relations Officer. He avers that despite demand letters issued by the Union, the Respondent failed to settle, its members' salaries and allowances amounting to Kshs. 20,061,211/- as well as unremitted union dues of Kshs. 250,000/-. Furthermore, he contends that the Respondent has violated its



members' constitutional rights under section 41 of *the Constitution*, by initiating redundancy affecting 78 of its members without notifying it. The deponent also maintains that the Respondent has misrepresented to the Labour Officer that the affected employees were not union members as evinced by the Respondent's letter to the Ministry of Labour Kisii County. The Applicant asserts that the Respondent's conduct has occasioned the grievants considerable hardship, including economic distress and exposure to legal proceedings before the Business Premises Rent Tribunal at Kisii. He further contends that the dispute has not undergone conciliation and that, unless the orders sought are granted, the grievants risk termination without payment by 12<sup>th</sup> February 2026, thereby suffering irreparable harm. On the basis of the foregoing, he urges the court grant the orders sought.

3. The Respondent opposes the Application through a replying affidavit sworn by Dr. Robert Manduku, its Chief Executive Officer. He deposes that the Claimant has, over the past year, persistently demanded payment of alleged salary arrears without identifying the specific employees on whose behalf the claim is made. He maintains that the application is incompetent as; no list of union members has ever been furnished to the Respondent, no CBA exists and no union dues have ever been remitted to the Claimant. With respect to the orders sought, the deponent avers that the prayer for payment of the alleged salary arrears is premature and cannot be granted prior to a full hearing; the prayer seeking to restrain implementation of the redundancy process has been overtaken by events, the redundancy having already been effected in accordance with the law; while the prayer for priority hearing is superfluous as it relates to the Court's inherent constitutional mandate.
4. He avers that the decision to declare staff redundant was justified by financial constraints caused by a range of institutional challenges, including changes in the legislative and regulatory framework, market competition, and administrative constraints. In particular he deposes that Respondent had substantial pending claims with the now defunct National Health Insurance Fund (NHIF), and continues to face similar challenges with the Social Health Authority (SHA), resulting in delayed payments. The Respondent further states that its downgrade from a Level 5 to a Level 3 hospital significantly reduced its service capacity and revenue streams. In view of the foregoing the Respondent urges the court to dismiss the application with cost.
5. The application was disposed of via filing of submissions.

### **Applicant's Submissions**

6. The Applicant asserts that the withholding of its members' salary has been admitted in the replying affidavit. In view of this the Applicant submits that the prayer for withheld salary should be allowed. The Applicant asserts that the continued withholding of salaries and failure to pay union dues contravenes *the Constitution* as well as the *Employment Act*. Particularly, it highlights Article 30 and 41 of *the Constitution* on freedom from slavery and the right to fair labour practices respectively. It also points to section 17 and 18(2) of the *Employment Act* that mandate payment of salary at the end of the month for employees engaged for periods exceeding one month. Additionally, section 19(g) is cited to support the position that failure to remit union dues is unlawful. In view of the foregoing the Applicant asserts that the Respondent's actions have occasioned its members financial hardship, mental anguish and social suffering, including eviction and subjection to litigation over unpaid rent. In light of the foregoing the Applicant urges the Court to allow the application.

### **Respondent's Submissions**

7. The Respondent submits that the Claimant lacks locus standi to institute the proceedings herein. The Respondent contends that the Claimant has neither produced a list of its members within the Respondent institution nor demonstrated the existence of a Recognition Agreement or Collective



Bargaining Agreement. In support of its position, it relies on section 54(1) of the *Labour Relations Act*. It also cites the case of *Communication Workers Union v Safaricom Limited* [2014] eKLR, where the Court emphasized the need for proof of representation by a union before enforcement of rights against an employer. It further relies on the decision in the case of *Kenya Hotels & Allied Workers Union v Alfajiri Villas (Magufa) Ltd* [2014] eKLR, where the Court held that a union cannot litigate on behalf of unidentified members.

8. On whether the Applicant has met the threshold for injunctive relief as established in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 the Respondent submits that none have been met. It submits that the orders sought are vague and incapable of enforcement, as the Claimant has failed to specify the affected employees, the sums claimed, or the contractual obligations allegedly breached. In this regard, the Respondent relies on the case of *Teachers Service Commission v Kenya National Union of Teachers & others* [2013] eKLR, where the Court held that orders must be clear and certain on their scope and beneficiaries.
9. In respect of redundancy, the Respondent submits that the process was lawful and complied fully with section 40 of the *Employment Act*, 2007. It contends that redundancy notices were duly issued, reasons communicated, and employee entitlements outlined and implemented, including issuance of letters of service. The Respondent relies on the case of *Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, which held that redundancy is lawful where justified by operational reasons and statutory procedure is followed, and *Thomas De LaRue (K) Ltd v David Opondo Omutelema* [2013] eKLR, which underscores compliance with section 40 as the key determinant of legality of redundancy. The Respondent further submits that the redundancy was necessitated by genuine financial and operational challenges, including delayed insurance reimbursements, restructuring within the healthcare sector, operational downgrading, and increased competition. It relies on the case of *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another* [2016] eKLR, where the Court recognized economic and operational constraints as valid grounds for redundancy.
10. In any case the Respondent asserts that the Application has been overtaken by events, as the redundancy process has already been implemented and employees notified. It relies on the case of *Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge* [1997] eKLR, for the proposition that courts do not issue orders in vain or incapable of practical implementation. The Respondent further submits that the application in so far as it seeks substantive reliefs at the interlocutory stage, is premature. It relies on the decision in *Judicial Service Commission v Gladys Boss Shollei & another* [2014] eKLR, where the Court cautioned against granting final remedies at an interlocutory stage. In conclusion the Respondent submits that the application lacks merit and should be dismissed with cost.

## **Disposition**

11. The application herein seeks injunctive relief. The Applicant seeks inter alia unpaid salary and allowance amounting to Kshs. 20,061,211/- pending hearing and determination of the suit; and an order directing the Respondent not to implement her undated letter to the Ministry of Labour Kisii County received on 12<sup>th</sup> January 2026. The Court is not persuaded that there has been adequate demonstration of the basis of grant of injunctive relief.
12. In the case of *Giella v Cassman Brown & Co. Ltd* (supra) the three key principles for granting an interlocutory injunction were set out. The applicant must prove that it has a prima facie case with a probability of success. The second limb is that the applicant will suffer irreparable loss if the injunction is not granted. Finally, if in doubt, the court will consider the balance of convenience. In this case, there



will be no loss that cannot be compensated by an award of damages. In the case before the Court a lot of facts will have to be distilled in order for the remedy sought to be properly granted. As such, the motion is not granted. Application dismissed albeit with no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 22<sup>ND</sup> DAY OF APRIL 2026**

**NZIOKI WA MAKAU, MCI Arb.**

**JUDGE**

