



Kenya Shipping Clearing Freight Logistics & Warehouse Workers Union v Vermont Flowers (EPZ) Ltd (Cause E298 of 2024) [2025] KEELRC 907 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 907 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E298 OF 2024
CN BAARI, J
MARCH 21, 2025**

BETWEEN

**KENYA SHIPPING CLEARING FREIGHT LOGISTICS & WAREHOUSE
WORKERS UNION CLAIMANT**

AND

VERMONT FLOWERS (EPZ) LTD RESPONDENT

RULING

1. Before Court is the Claimant/Applicant's Motion application dated 30th October, 2024, brought pursuant to Article 22(1),50(1), of *the Constitution*, Section 40(1)(c) & 43(1) & (2) of the *Employment Act* 2007 and Section 12 of the *Labour Relations Act*. The Applicant seeks the following reliefs:-
 - i. Spent
 - ii. That pending the hearing and determination of this suit, an injunction does issue restraining the Respondent from effecting upcoming Redundancies of four (4) affected employees.
 - iii. That pending the determination of the claim herein, an injunction does issue restraining the Respondent from sacking, victimizing, sending on compulsory leave and intimidation of the entire employees.
 - iv. That the costs be provided for
2. The Motion is supported by the grounds on the face and the supporting affidavit of James O. Tongi, the General Secretary of the Applicant sworn on 30th October, 2024.
3. The Applicant avers that on 19th September, 2024 the Respondent in a letter to the Applicant indicated their intention to declare some of their members redundant. It states further that it doubts the legality of upcoming redundancy on the basis that there are temporary/casual employees



- still working. That if indeed, there is economic constrain why would the Respondent continue to onboarding temporary/casual worker daily.
4. The Applicant states that the Respondent stands to suffer no prejudice if the orders are granted.
 5. The Respondent on its part, opposed the Motion vide a replying affidavit sworn by one Francis Kariuki in November, 2024. It avers that the four employees' notice period lapsed by 3rd November 2024, and that is the day they ceased being employees of the Respondent's company.
 6. It states further that subsequent to the termination, they were paid their terminal dues by 7th November 2024, and issued with the respective Certificates of Service. The Respondent avers that it exchanged correspondences with the union regarding the redundancies and some of which are attached to the reply.
 7. It is the Respondent's assertion that the law recognizes termination on account of redundancy as a lawful way to relieve an employer of the burden of operational costs as long as due procedure is followed as provided under Section 40 of the [Employment Act](#).
 8. That the Applicant would be asking too much to force the Respondent to retain the workers if their continued employment is unfeasible and/or unsustainable and the Applicant has not attached any evidence to support the allusion that the business can still sustain the services of all the employees in the organization.
 9. The Respondent further states that the application lacks merit and is procedurally defective, as it fails to satisfy the mandatory requirements for injunctive relief for having not shown that irreparable injury will occur to its unionized employees if the injunction is not granted, and that there is no other remedy available by which they will protect the employees from the consequences of the redundancy.
 10. That the Respondent has just initiated the redundancy process and nothing bars the Applicant from approaching this Honourable court to seek relief should the entire process be flawed for failure to meet the mandatory requirements of the [Employment Act](#).
 11. It states that the Applicant has not provided any evidence to fault the procedure adopted by the Respondent in initiating the redundancy process, and that the mention of specific individuals (e.g., temporary workers) without evidence of their roles or relevance to the redundancy process, is speculative and fails to provide specific grounds of non-compliance.
 12. That until the CBA is agreed on and signed by both parties, the Respondent company is not bound to act within any proposal made by the Union in the CBA draft.
 13. It states further that the seniority in years served is not the only consideration allowed in law when selecting those to be declared redundant. That Clause 40(1)(c) of the [Employment Act](#) of 2007 lists skill, ability, and reliability of employees as other factors of consideration.
 14. The Respondent states that asking for an injunction against the termination of the four employees is a prayer that has been overtaken by events as their employment stood terminated by 4th November 2024.
 15. The Respondent finally urges this court in the interest of justice to strike out the Notice of Motion application dated 30th October 2024 with costs.
 16. Parties canvassed the motion by way of written submissions, and submissions were received from both parties and have been duly considered.



Analysis and Determination

17. I have considered the Motion, the grounds and affidavit in support and the rival submissions. The singular issue for determination is whether the motion has merit.
18. The Applicant seeks an injunction restraining the Respondent from effecting the redundancies of four (4) of the Respondent's employees who are her members. It additionally seeks an injunction restraining the Respondent from sacking, victimizing, sending on compulsory leave and intimidation of the entire employees.
19. In the famous case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358, the court set out the principles governing grant of injunctive relief as being demonstration of a prima facie case with a probability of success, that the Applicant will suffer irreparable harm that cannot be compensated by damages; and finally, that the balance of convenience favours the grant of the injunction.
20. On whether the Applicant has established a prima facie case, it is settled that a prima facie case is not necessarily one that must succeed. The question then, is whether the Applicant has satisfied the conditions in the *Giella* case (*supra*) for the grant of the orders sought.
21. The Respondent's position is that it issued four employees with redundancy notices, and whose notice period lapsed by 3rd November 2024. It avers further that the grievants ceased being employees of the Respondent's company, and that subsequent to the termination, they were paid their terminal dues by 7th November 2024.
22. A glance at the instant application, shows that the Applicant has not provided evidence to fault the redundancy process adopted by the Respondent, knowing that redundancy is generally a legitimate ground to terminate employment where the employer can show that it adhered to the seven steps set out under Section 40 (1) of the *Employment Act*.
23. I further note that the Respondent's assertion that the prayers sought have been overtaken by events, has not been controverted, thus making the grant of the orders an exercise in futility.
24. It is also obvious that the harm suffered by the grievants herein, by virtue of the termination which in any event has already taken effect, is one that can be compensated by way of damages.
25. I conclude by finding the motion devoid of merit, and is hereby dismissed with no orders on costs.
26. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 21ST DAY OF MARCH, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Mutongoi present for the Claimant/Applicant

Mr. Mutonyi present for Respondent

Ms. Esther S-CA.

