



Mbugua v Geothermal Development Co. Ltd (GDC) (Cause E776 of 2022) [2023] KEELRC 768 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 768 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E776 OF 2022
DKN MARETE, J
MARCH 28, 2023**

BETWEEN

BENJAMIN MBUGUA APPLICANT

AND

GEOHERMAL DEVELOPMENT CO. LTD (GDC) RESPONDENT

RULING

1 This is an application by way of Notice of Motion dated October 25, 2022. It seeks for orders *inter alia*:

“A temporary injunction to restrain the Respondents or agents from proceeding with the summons, the disciplinary action and process and the envisaged or any termination or dismissal from employment against the Claimant until determination of a report to the Director of Criminal Investigations for misappropriation of public funds against Members of the Trustees of the Respondents.”

2 It’s other gist is that the Respondent’s action of subjecting the applicant to show cause on four instances are illegal, unlawful and actuated by malice and geared at terminating or forming a basis for terminating the employment of the Claimant.

3 The Respondent in answer through a Replying Affidavit dated on November 11, 2022 avers that the officer-in-charge acted within the mandate of appointment of trustees to the Retirement Benefit Scheme and that she has no control of her duties and functions.

4 The Respondent further buttresses a case by placing the following defence on the application;

“a. The Application and the entire suit are hopelessly and incurably defective for mixing the allegations and claims regarding the Claimant’s duties and obligations to an independent RBS and those of the Respondent.



- b. The allegations at paragraph 3,4,5,6,7,8,9,10 among others , of the Applicant’s affidavit are irrelevant to the determination of the grievances against the Respondent as they are made in respect of an independent RBS, and such allegations should rightly be ventilated before competent authorities including the Retirement Benefits Authority.
- c. A cursory glance at the Application and the suit reveals that the Claimant has not met the minimum threshold of being accorded any form of relief by the Court, especially when the full facts are disclosed below are taken into account.”

5 The Respondent’s other case is that the Claimant/applicant is not blemish free, having been subjected to various show cause letters for violation of the Human Resource Policies *et al.*

6 The Respondent in further defence avers as follows;

That I am reliably informed by the Respondent’s advocates herein, which advice I verily believe and rely on, that:

- a. “The various allegations levelled by the Claimant are disjointed, unrelated and do not constitute a coherent case from which a judicial remedy could issue;
- b. The various allegations presented in the Claimant’s application are totally unrelated to the issues relating to the disciplinary charges that the Claimant face, and his suit and application are akin to throwing everything at the wall and seeing if any of it sticks.
- c. The disciplinary cases instituted against the Claimant were properly done under the law and the Claimant has a chance to raise anything in his defence during those disciplinary proceedings.
- d. Once a disciplinary process has been set in motion by the employer, the Court will not interfere and will let that process run fairly to conclusion.
- e. The Court will not aid the Claimant’s dreams of having the disciplinary processes nipped in the bud or in any way have the employer’s supervisory and disciplinary authority over its employees usurped.
- f. The bulk of the reliefs sought by the Claimant in the application are permanent nature and cannot be granted by the Court at an interlocutory level.
- g. In any case, the Claimant has failed to meet the bare threshold of being entitled to interlocutory remedy.
- h. The purpose of an interlocutory application of this nature is to safeguard rights or the subject matter that would be rendered nugatory.
- i. The Claimant does not have a prima facie case with a chance of success, even if the claim and the application was undefended.
- j. The Claimant has not demonstrated what irreparable harm he would suffer in the even the application is now allowed.



- k. No irreparable harm or injustice will be caused on the Claimant in the circumstances.
- l. The Honourable Court would not ordinarily issue orders in vain, and the application is not merited.
- m. The application and the suit are an abuse of the Court process.”

- 7 The Respondent’s case in defence of the application overwhelms that of the applicant. The Application seeks to pre-empt or estop disciplinary proceedings against himself until criminal issues against the directors of the Retirement Benefits Scheme of the respondent is determined. It is the respondent’s argument, case and submission that the application does not meet the threshold laid out in support of preliminary action by this court. This is more so bearing in mind the lack of legal relationship between the Respondent and the scheme.
- 8 It is trite law and practice that courts should not interfere with disciplinary process unless there are compelling reasons for such action. Courts should not ordinarily convert themselves into managers of the shop floor or work place. This is derided by the law.
- 9 This is the instant case. What the Claimant/Applicant is seeking from this court is not deliverable. It would be out of course for the courts to disable disciplinary proceedings under such circumstances.
- 10 I am therefore inclined to dismiss the application with orders that each party bears their costs of the application.

DELIVERED, DATED AND SIGNED THIS 28TH DAY OF MARCH 2023.

D K NJAGI MARETE

JUDGE

Appearances

Mr Wekesa instructed by Simiyu Wekesa Advocates for the Claimant/Applicant

Miss Adhiambo instructed by Agnes Muthengi Advocates for the Respondent

