



Oyieyo (Suing on behalf of all Early Childhood Education Teachers within Homabay County hereafter referred to as ECDE) & 5 others v County Government of Homabay & 3 others (Petition E006 of 2023) [2023] KEELRC 741 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 741 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E006 OF 2023
CN BAARI, J
MARCH 28, 2023

BETWEEN

ESTHER AKINYI OYIEYO (SUING ON BEHALF OF ALL EARLY CHILDHOOD EDUCATION TEACHERS WITHIN HOMABAY COUNTY HEREAFTER REFERRED TO AS ECDE) 1ST PETITIONER
LIDIA AKOTH JUMA 2ND PETITIONER
QUINTER ATIENO OKATCH 3RD PETITIONER
HELLEN AMONDI OMORO 4TH PETITIONER
JANICE AKINYI ONYANGO 5TH PETITIONER
JASPER OKENGO RAONGO 6TH PETITIONER

AND

COUNTY GOVERNMENT OF HOMABAY 1ST RESPONDENT
THE HOMABAY COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT
THE GOVERNOR, HOMABAY COUNTY 3RD RESPONDENT
THE COUNTY SECRETARY HOMABAY COUNTY 4TH RESPONDENT

RULING

1. This ruling relates to the Petitioners' Motion application dated February 6, 2023, brought pursuant to Rule 23(1)(2) and (3) of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms and Enforcement of the Constitution\) Practice and Procedure Rules](#), 2012, and Sections 1A, 1B, and 3B of the [Civil Procedure Act](#). The Petitioners seek orders that: -



- i. Spent.
 - ii. Spent.
 - iii. After hearing of the application inter parties, an interim order be issued suspending the effect or further effect of the unilateral directives dated January 20, 2022, and January 23, 2023, with Reference Numbers HB/CTY/CPSB/VOLIII(43) and HB/PSC/CS/VOL.II/20 and interference or further interference of the contract of the Petitioners dated July 5, 2022, and for the avoidance of doubt, that the status, entitlement and remuneration/emolument of the Petitioners as at December, 30th 2022, be maintained until the main petition is heard and determined.
 - iv. The Costs of the application be provided for.
2. The application is supported by grounds on the face of the motion and the supporting and supplementary affidavits of Esther Akinyi Oyieyo. The crux of the motion is that the Petitioners and other Early Childhood Development Teachers (ECD) who are permanent and pensionable employees of the Respondents, discovered early in the year that their pay slips carried negative balances, and upon inquiry, discovered that they had been converted to contracts terms and their salaries reduced.
 3. The Petitioners aver that the Respondents' directive in respect of their contracts of service, are illegal, irrational and unilateral, and that the result of the directive, is that they are unable to meet their accommodation and commuter needs, and neither can they service their loans on account of reduced salaries.
 4. The Petitioners aver that documents produced by the Respondents in rebuttal and purported to emanate from the Salaries and Remuneration Commission, do not apply to them. It is the Petitioners' position that the illegal directive has exposed them to economic shocks and embarrassment.
 5. It is the Petitioners' deposition that they have established a prima facie case with chances of success and warrant the grant of the orders sought.
 6. The Respondents opposed the motion through a replying affidavit sworn by Prof. Bernard Muok, the 4th Respondent herein on February 27, 2023.
 7. The Respondents' position is that they received a circular from the SRC communicating change of cadres for ECD teachers, which arose from a job evaluation exercise, and that the SRC required that the directive is implemented, and hence their decision subject herein.
 8. The Respondents aver that the letter dated January 23, 2023, sought to be quashed, does not create any rights or obligations to be suspended. They further aver that the letter of January 23, 2023, only sought to implement the SRC directive given in their letter of December 10, 2021.
 9. Parties canvassed the application orally on March 1, 2023, where Counsels for the parties reiterated their pleadings.

Determination

10. The principles guiding the grant of interlocutory injunction are now well settled. The principles were properly set out in *East African Industries vs Trufoods* [1972] EA 420 and in the celebrated case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358.



11. In *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR the Court restated the law as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to: -

- (a) establish his case only at a *prima facie* level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.”

12. Further, Ringera, J in *Airland Tours & Travel Limited vs National Industrial Credit Bank* Nairobi (Milimani) HCCC No 1234 of 2002, held that in an interlocutory application, the Court is not required to make any conclusive or definitive findings of fact or law, and most certainly not on the basis of contradictory affidavit evidence or disputed propositions of law.

13. In *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, the Court of Appeal made the following observation on what constitutes a *prima facie* case: -

“The principles which guide the Court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience...A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true that the Court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “*prima facie* case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “*prima facie*” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a sustainable cause of action, the words “*prima facie*” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of a *prima facie* case, the former being the lesser standard of the two...In civil cases a *prima facie* case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”

14. The Petitioners have submitted that their terms of service have been reviewed, and their salaries unilaterally reduced. Without going into the merits of the directive by the Respondent, the issues herein border on infringement of the Petitioners’ rights and which further points to possible material and substantial loss on the part of the Petitioners.



15. It is their assertion that they can no longer commute to their work places and neither are they in a position to service their loan facilities.
16. In my considered view, and based on the material placed before this Court, I find and hold that the Petitioners have established on a *prima facie* basis, that they are employees of the Respondents, and that their terms of service have been reviewed and which review has negatively affected them. Having established a prima facie case, I hold that the Petitioners are entitled to the grant of injunctive relief.
17. Consequently, an order is hereby issued that the status, entitlement, remuneration and emoluments of the Petitioners as at December 30, 2022, be maintained until the hearing and determination of the main petition.
18. Costs shall abide the petition.
19. Orders of the Court.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 28TH DAY OF MARCH, 2023.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Otieno Obiero present for the Petitioners

Mr. Ogembo present for the Respondents

Christine Omolo – C/A

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