



Kenya Chemical Workers Union v Kenya Flexogravure Limited (Cause E022 of 2023) [2023] KEELRC 1268 (KLR) (18 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1268 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E022 OF 2023
DN NDERITU, J
MAY 18, 2023**

BETWEEN
KENYA CHEMICAL WORKERS UNION CLAIMANT
AND
KENYA FLEXOGRAVURE LIMITED RESPONDENT

RULING

1. In a notice of motion dated March 16, 2023, the Claimant prays for-
 1. That the Honourable court be pleased to certify this Application urgent and be heard the same e-xparte in the first instance.
 2. That pending the hearing and determination of this application, this Honourable court be pleased to issue a Temporary Injunction restraining the Respondent from interfering with the employment of the locked out employees in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.
 3. That pending the hearing and determination of this suit, this Honourable court be pleased to issue a Temporary Injunction restraining the Respondent from interfering with the employment of the locked out employees in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.
 4. That pending the hearing and determination of this Application of this Application this Honourable court be pleased to issue a permanent Injunction restraining the Respondent from interfering with the employment of the locked out employees in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.
 5. That pending the hearing and determination of this suit, this Honourable court be pleased to issue permanent Injunction restraining the Respondent from interfering with the



employment of the locked out employees in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.

6. That pending the hearing and determination of this Application, this Honourable court be pleased to issue an Order for the grievant/employees of the Respondent to access the premises and continue with their work unconditionally with no interference from the Respondent in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.
 7. That pending the hearing and determination of this Suit, this Honourable court be pleased to issue an Order for the grievants/employees of the Respondent to access the premises and continue with their work unconditionally with no interference from the Respondent in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.
 8. That this Honourable court be pleased to grant any further orders that it might see fit, fair and just.
 9. That the costs of this application be borne by the Respondents.
2. The application is expressed to be brought under Section 80 of the *Labour Relations Act*, Order 40 Rule 4 of the *Civil Procedure Rules*, Article 41(5) of *the Constitution*, and any other enabling provisions of the law.
 3. The application is based on the grounds on the face of the application and supported by the affidavit of Peter Ouko Onyango, the Secretary General of the Claimant, sworn on 16th March, 2023.
 4. In opposition to the application, through Maiyo, Mbugua, & Cheruiyot Advocates, the Respondent filed a replying affidavit sworn by Sonal Patel, a director of the Respondent, on March 23, 2023, with one annexure thereto.
 5. The Claimant filed a supplementary affidavit on March 27, 2023 with one annexure thereto sworn by the same deponent as the supporting affidavit above.
 6. On March 28, 2023 this court directed that the application be heard by way of written submissions. Counsel for the Applicant, Mr Mutongoi, filed submissions on April 17, 2023 but the Respondent's Counsel, Mr Maiyo, indicated that he did not wish to file written submissions.

II. Background

7. The Claimant commenced this cause vide a memorandum of claim dated March 16, 2023 seeking the following –
 - a. This Honourable court be pleased to issue a Temporary Injunction restraining the Respondent from interfering with the employment of the locked out employees in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.
 - b. This Honourable court be pleased to issue a Permanent Injunction restraining the Respondent from interfering with the employment of the locked out employees in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.
 - c. This Honourable court be pleased to issue an Order for the grievants/employees of the Respondent to access the premises and continue with their work unconditionally with no interference from the Respondent in any manner whatsoever either by itself and or servants and or agents and or anyone with authority of the Respondent.



- d. This Honourable court be pleased to grant any further orders that it might deem fit, fair and just.
 - e. The cost of this case be met by the Respondent in favour of Claimant.
8. The Respondent entered appearance on March 23, 2023 but no response or defence to the claim has been filed yet.

III. Issues for determination

9. The Claimant's (a trade union) case is that on March 13, 2023 its 21 members who are employees of the Respondent were locked out of the place of work at the Industrial area, Nakuru city, Nakuru County, wherein the Respondent is engaged in the business of manufacture of plastic products.
10. However, the said 21 employees have not been named and their membership with the Respondent have not been authenticated or exhibited.
11. The deponent in the supporting affidavit and the supplementary affidavit deposes that the Respondent's objective is to unlawfully declare the said employees redundant without following the law.
12. On the other hand, the Respondent alleges in the replying affidavit that it is in the process of effecting the redundancy process and that due to harsh economic circumstances, it is not able to continue production hence the lockout. The Respondent undertakes to pay all the dues legally due and payable to the employees once the redundancy process is completed.
13. Flowing from the foregoing as read alongside the pleadings so far filed by the parties and submissions filed by Counsel for the Applicant the issues for determination by this court flow from the prayers in the application –
 - a. Should this court issue an order injuncting the Respondent from interfering with the employment of the locked-out employees pending the hearing and determination of the cause?
And,
 - b. Who should meet the costs of this application?
14. It is admitted by the Respondent that it has locked out its employees. It is stated that the reason for the lock-out is that the Respondent is unable to continue with production due to harsh economic times and that it is in the process of declaring all the affected employees redundant.
15. Other than a general notice to all the employees dated March 13, 2023 and copied to the Sub-county labour officer, Nakuru, there is nothing else on record to enable this court to assess how far the redundancy process has been carried out.
16. On the other hand, the Claimant has presented no evidence of the names, terms and conditions of the affected employees, and proof that the affected employees are indeed members of the union.
17. Following the reasoning in *Geilla v Casman Brown Co Ltd* (1973) EA 358 and in the foregoing circumstances of this cause, it is in the view of this court that the Claimant has not made out a prima facie case for issuance of the temporary injunction in the manner and terms sought in the application pending the hearing and determination of the cause. There is no irreparable damage or loss that has been demonstrated that is incapable of being compensated by an award of damages or costs.



18. It is the considered view of this court that the Claimant may need to amend the claim to reflect the real issues in contest, identifying the union members and their terms and conditions of employment. There is also need to confirm the status of the redundancy process.
19. However, this court must caution the Respondent that it has to continue paying the affected employees all their monthly dues in salaries and allowances, follow the law in effecting the redundancy, and also pay all terminal dues and benefits payable to the affected employees at the end of a lawful redundancy process.
20. For all the foregoing reasons and in the interest of justice, this court in disposal of the notice of motion dated March 16, 2023 issues the following orders -
 - a. That pending the hearing and determination of this cause or until such other or further orders of this court an interim order of injunction be and is hereby issued restraining the Respondent from terminating the affected employees on redundancy or in any other manner except in accordance with the law.
 - b. That pending the hearing and determination of this cause or until such further and or other order of this court and unless lawfully terminated on redundancy or otherwise, the affected employees shall continue to receive and the Respondent is ordered to pay their monthly salaries payable as at the time of lockout on March 13, 2023.
 - c. That in default of (a) and (b) above the Claimant shall be at liberty to move the court as appropriate.
 - d. The costs of this application shall be in the cause.

DATED, DELIVERED VIRTUALLY AND, SIGNED AT NAKURU THIS 18TH DAY OF MAY 2023.

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DAVID NDERITU

JUDGE

