



Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Kisii University Council (Cause 2 of 2023) [2023] KEELRC 2990 (KLR) (22 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2990 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2 OF 2023
S RADIDO, J
NOVEMBER 22, 2023**

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS CLAIMANT**

AND

KISII UNIVERSITY COUNCIL RESPONDENT

RULING

1. The Kenya Union of Domestic, Hotels, Educational and Hospital Workers (the Union) sued Kisii University Council (the Respondent) before the Court sitting in Nakuru on 28 October 2020, alleging unlawful redundancy of some 226 of its members.
2. The Memorandum of Claim was accompanied with a Motion seeking protective interim orders. The Court granted interim stay orders on 28 October 2020.
3. On 16 November 2020, the Respondent applied to have the Cause transferred to the Court sitting in Kisumu. It also filed a Response on the same day.
4. On 31 December 2020, the Union filed a contempt application against the Respondent, alleging non-compliance with the stay orders.
5. The Union filed another contempt application on 13 May 2021 on the same grounds.
6. On 27 September 2021, the Respondent filed another Response to the Claim.
7. On 16 November 2021, the Court in Nakuru rendered itself on the contempt application and found the Vice-Chancellor of the University in contempt. The Court also directed that it would give directions on the transfer application after the conclusion of the contempt proceedings.



8. The Respondent was dissatisfied with the contempt Ruling and it filed a Notice of Appeal on 17 November 2021.
9. On 23 November 2021, the Respondent moved the Court seeking an order staying the sentencing of the Vice-Chancellor for contempt pending determination of the Appeal before the Court of Appeal.
10. The Court in Nakuru heard the application and in a Ruling delivered on 19 May 2022, allowed the application thus staying the sentencing of the Vice-Chancellor.
11. On 6 June 2023, the Court in Nakuru ordered that the Cause be transferred to this Court and on 27 September 2023, the Respondent filed a Motion seeking orders:
 - i. ...
 - ii. This Honourable Court be pleased to stay further proceedings herein pending the hearing and determination of Nakuru Civil Appeal No. E114 of 2021.
 - iii. Costs of this application do abide the determination of Nakuru Civil Appeal No. E114 of 2021.
12. The grounds in support of the application were briefly that the determination of the Appeal would substantively impact this Cause; a determination of the Appeal would leave no issues for this Court's consideration and that an order of stay of the proceedings would not prejudice the Union.
13. The Union filed a replying affidavit on 29 September 2023 asserting that the Appeal had not been served upon it; the main Cause was not subject of the Appeal as the same only concerned a contempt finding and that the application was an abuse of the court process.
14. The Respondent filed a further affidavit and submissions on 23 October 2023. It was contended in the affidavit that service had been made upon the Union.
15. The Court has considered the Motion, affidavits and submissions.
16. An order staying proceedings is an exercise of the court's discretion.
17. The main cause advanced by the Union before this Court is whether the redundancies evinced by the Respondent through notices dated 1 October 2020 constituted unfair termination of employment as contemplated by section 40 of the *Employment Act*, 2007 and the parties collective bargaining agreement.
18. The Union moved the Court to interdict the notices and the Court granted a stay order on 28 October 2020.
19. The Respondent allegedly ignored the stay orders and the Union moved for contempt. The Respondent then filed a Notice of Appeal.
20. At the core of the contempt application was the question whether the Respondent had carried out redundancies despite the existence and service of court orders.
21. As this Court understands, the appeal before the Court of Appeal is on a narrow question of whether there were court orders in place which were willfully disobeyed by the Respondent.
22. The resolution of that narrow question ought not in the view of this Court, handicap the Court from interrogating the primary dispute which was presented before it, whether the redundancies were lawful.



23. The *Employment and Labour Relations Court Act* requires employment and labour disputes to be determined expeditiously and proportionately. The question of the redundancy of the 226 union members has been pending for nearly 3 years now.
24. The contempt appeal is severable from the main dispute outstanding before this Court.

Conclusion and Orders

25. The Court declines to issue an order staying the proceedings herein. The application filed on 27 September 2023 is dismissed with costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN MIGORI ON THIS 22ND DAY OF NOVEMBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

