



REPUBLIC OF KENYA



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**Okeyo v Board of Directors HHI Management Service Limited & another
(Cause E970 of 2023) [2023] KEELRC 3278 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3278 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E970 OF 2023
JK GAKERI, J
DECEMBER 7, 2023**

BETWEEN

STEVE OKEYO CLAIMANT

AND

**BOARD OF DIRECTORS HHI MANAGEMENT SERVICE
LIMITED 1ST RESPONDENT**

HHI MANAGEMENT SERVICE LIMITED 2ND RESPONDENT

RULING

1. Before the court for determination is the Applicant's Notice of Motion dated 23rd November, 2023 seeking Orders That:-
 1. Spent.
 2. This Honourable Court be pleased to issue injunction restraining the 1st and 2nd Respondents from proceeding with any restructuring, any negotiations to restructure or any rationalization of staff that may render the Applicant redundant pending hearing and determination of this Application.
 3. This Honourable Court be pleased to issue an injunction restraining the 1st and 2nd Respondents from proceeding with any restructuring, any negotiations to restructure or any rationalization of staff that may render the Applicant redundant pending hearing and determination of this suit.
 4. This Honourable Court be pleased to issue orders maintaining the employment status quo of the Applicant pending hearing and determination of this suit.



5. This Honourable Court be pleased to issue an Order directing the parties herein to engage in Alternative Dispute Resolution and report back to the Court within a timeline to be set by the Court.
6. That the cost of the Application be awarded to the Applicant.
2. The Notice of Motion is expressed under relevant provisions of the Civil Procedure Act, Civil Procedure Rules, 2010, Employment and Labour Relations Court (Procedure) Rules, 2016, the Employment Act, 2007 and the Constitution of Kenya, 2010 and is based on the grounds set forth on its face and supported by the Affidavit of Mr. Steve Okeyo sworn on 23rd November, 2023.
3. The Notice of Motion is challenging the Respondent's redundancy notice to the Claimant dated 10th November, 2023.
4. The applicant argues that the impending termination of employment on account of redundancy is malicious and the notice did not disclose the criteria used or other roles affected by the redundancy.
5. The applicant also questions the Respondent's decision to restructure and avers that he will suffer substantial loss if the orders sought are not granted.
6. The applicant is the Group Chief Executive Officer of the Respondent.
7. On its part, the Respondent did not respond to the Notice of Motion but filed an application dated 27th November, 2023 for the proceedings to be stayed and the dispute referred to arbitration in accordance with Clause 6.2 of the applicant's employment contract.
8. On 24th November, 2023 when the matter came up under Certificate of Urgency, the court, after considering the Notice of Motion, Supporting Affidavit and annexures, did not decree any interim relief but directed service of the Notice of Motion within 3 days and a hearing on 30th November, 2023.
9. On 30th November, 2023, counsel for the Applicant prayed for interim orders as tabulated in the Notice of Motion, a prayer that was vigorously opposed by counsel for the Respondent.
10. In an endeavour to hasten the resolution of the matter, the court encouraged the counsels to engage and explore ways to resolve the dispute through ADR in consonance with the terms of the Applicant's contract of employment with the Respondent.
11. Hearing of the Notice of Motion was deferred to 7th December, 2023 to facilitate the engagement and reporting to the court.
12. On 7th December, 2024, counsels reported that after engaging each other as proposed by the court, they had agreed that the matter proceeds under the court annexed mediation.
13. Counsel for the applicant however insisted on interim orders which counsel for the Respondent vehemently objected to citing the client's instructions.
14. The Applicant's counsel submitted that court annexed mediation did not bar the court from granting interim orders in a suit as it would enable the parties negotiate in good faith as the status quo was maintained.
15. Counsel urged that the lapsing of the applicant's redundancy notice would render the mediation process nugatory.
16. Counsel for the applicant prayed for Order No. 2 and 4 of the Notice of Motion.



17. In his response, counsel for the Respondent argued that the applicant was inter alia litigating the matter before the court in the public domain and cited some article on the Daily Nation website which quoted the applicant's counsel, copies of which were availed after the court adjourned the hearing to 2.00 pm.
18. This is the furthest the court will go on that issue for now.
19. Counsel further urged that granting Order No. 2 of the Notice of Motion would stall the entire restructuring process the Respondent was undertaking, to its detriment.
20. Counsel submitted that by the statement of claim on record, the Claimant was praying for monetary reliefs as opposed to injunctive reliefs and the claim was substantively compensatory. Counsel submitted that mediation was still the most effective way to resolve the dispute and the same would not be defeated even if the applicant's redundancy notice lapsed on 9th December, 2023.
21. Counsel submitted that the applicant had additionally released confidential information about the Respondent and the Respondent had filed an application for its expunction from the record.
22. Counsel urged that it would be unfair for the applicant to force the Respondent retain a relationship that had irretrievably broken down and trust and confidence between the parties lost. Counsel urged that it would also be unfair to the Respondent.
23. He argued that the suit ought to be allowed to take its natural course.
24. Having considered the Notice of Motion, grounds, affidavit in support and heard the respective submissions commandingly and eloquently put by counsel, the court is persuaded that the pertinent issues in this suit can hardly be addressed at this stage for interim orders to be made.
25. The court can decipher considerable emotions in the suit, its merits notwithstanding.
26. The principles that govern the grant of a temporary injunction are well settled as enunciated in *Giella V Cassman Brown Co. Ltd* (1973) EA 358 namely; prima facie case with probability of success, the applicant might otherwise suffer irreparable injury and if in doubt balance of convenience.
27. The concept of prima facie case was aptly captured by the Court of Appeal in *Mrao Ltd V First American Bank & 2 others* (2003) KLR.
28. In a nutshell, the court must on the basis of the material before it conclude that a right has been violated and an explanation or rebuttal was imperative.
29. The principle of irreparable loss was exquisitely captured by the Court of Appeal in *Nguruman Ltd V Jan Bonde Nielsen & 2 others* (2014) eKLR that the applicant must demonstrate that the injury in question is actual, substantial and demonstrable and more significantly, "injury that cannot "adequately" be compensated by an award of damages . . . Where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is of such a nature that monetary compensation of whatever amount will never be adequate remedy."
30. This is undoubtedly an onerous burden on the applicant. (See also *Halsbury's Law of England*, 3rd Edition Vol. 21 Paragraph 739 at page 352.)
31. Finally, the concept of balance of convenience has been explained variously. In *Byram Chebii Kipkoech V Barnabas Tuitoek Bargaroria & another* (2019) eKLR, the court correctly captured it as comparison of the comparative inconvenience on the parties if the order prayed for was granted or not granted.
32. Although the applicant came to court at the right time and has a prima facie case, this court is not persuaded that interim orders to stop the restructuring process being undertaken by the Respondent



- would be an appropriate remedy in the circumstances as it would inter alia stall a legitimate process altogether until the suit herein is heard and determined.
33. This is because should the redundancy process be found to be faulty, the applicant will have established a case for unlawful termination and compensation will ensue.
 34. This view is further reinforced by the prayers the applicant has tabulated in his statement of claim dated 23rd November, 2023 namely;
 - a. Declaration that the termination on account of redundancy is unprocedural and unlawful and maintenance of the Claimant in his position as the Group Chief Executive Officer unless there is any lawful cause for termination.
 - b. In the alternative to (a)
 - i. 12 months' salary Kshs.20,679,984/=.
 - ii. One month's salary in lieu of notice Kshs.1,723,332/=.
 - iii. Nominal damages Kshs.1,723,332/=.
 - c. In the alternative to (a) and (b) above
 - i. Salary up to including the last day of employment.
 - ii. Severance pay at a rate of 15 days for every completed year of service.
 - iii. One month's salary in lieu of notice.
 - iv. Pay for all accrued leave days.
 - d. Costs and interest of the suit at court rates.
 - e. Any other or further relief the court may deem fit to grant.
 35. This far, it is clear to the court that the corner stones of the Claimant's case are retention of the position he occupies at the moment or compensatory relief.
 36. It need not be emphasized that the Claimant is the Group Chief Executive Officer of the Respondent, which is a critical position in the management of the Respondent's affairs and the court would, unless convincingly satisfied, be hesitant to order the retention of a relationship between the two at this stage before fully appreciating all the facts which can only be canvassed at the hearing.
 37. It is clear that the Respondent has resolved to let go its Group Chief Executive Officer and proposes to resolve the dispute out of court which in the court's view is the most appropriate mechanism for both parties as it is expeditious, efficient, cost effective, less acrimonious and most significantly private.
 38. Article 159(2)(c) of the Constitution of Kenya, 2010 enjoins the court to promote and enhance ADR and traditional dispute resolution mechanisms and, in the court's view, this is a proper suit for resolution through the court annexed mediation or arbitration as the parties may agree.
 39. In the upshot, the court is not persuaded that the applicant has not made a sustainable case for interim order Nos. 2 and 4 of the Notice of Motion and the same fails.
 40. Counsels are encouraged to embrace the court annexed mediation as agreed and endeavour to resolve the matter in good faith and in the best interests of their clients.

Orders accordingly.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 7TH DAY OF
DECEMBER 2023**

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

