



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 103 OF 2018**

VINCENT OLUOCH OLANDO.....1<sup>ST</sup> CLAIMANT/APPLICANT  
LEONARD OCHIENG KICHE.....2<sup>ND</sup> CLAIMANT/APPLICANT  
CAROLINE AKINYI AWINO.....3<sup>RD</sup> CLAIMANT/APPLICANT  
JOSHUA ODIRA OUMA.....4<sup>TH</sup> CLAIMANT/APPLICANT  
PHAREZ OLUOCH OKELLO.....5<sup>TH</sup> CLAIMANT/APPLICANT  
JOHN OWINO OWINO.....6<sup>TH</sup> CLAIMANT/APPLICANT  
DANIEL ODHIAMBO OWUONDA.....7<sup>TH</sup> CLAIMANT/APPLICANT  
MAURICE AKINYI ALEX.....8<sup>TH</sup> CLAIMANT/APPLICANT  
ANJELINE AKINYI ALEX.....9<sup>TH</sup> CLAIMANT/APPLICANT  
CAMILUS OKAKA IKENGA.....10<sup>TH</sup> CLAIMANT/APPLICANT

**VERSUS**

MIGORI COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT  
MIGORI COUNTY PUBLIC SERVICE BOARD.....2<sup>ND</sup> RESPONDENT

**RULING**

1. The application dated 21/5/2020 filed by the claimants/applicants, prays for an Order in the following terms *interalia*:-

(i) **THAT**, this Honourable Court be pleased to issue an Order compelling the Respondent to pay the claimants/applicants their salary for April, May, 2020 and all subsequent months thereof pending hearing and determination of this cause.

(ii) **THAT**, this Honourable Court be pleased to issue an Order of temporary injunction prohibiting the respondents, their employees, agents, representatives or servants from terminating the services of the claimants/applicants, withholding their full salary and/or allowances and/or in any way whatsoever interfering with their employment pending hearing and determination of this Cause.

2. In short the claimants/applicants seek the Court to order the employer to pay their April and May, 2020 salary and prohibit the employer from terminating the claimants' contracts of employment pending the hearing and determination of the suit.

3. The Court did not grant interim orders *ex parte* and stated that the applicants should consider to prosecute the suit on the merits and to fast-track a resolution of the dispute.

4. The application is premised on grounds *interalia*:-

(a) That the claimants were employed as casual employees of the respondent for the past five (5) years.

(b) That the 1<sup>st</sup> respondent has refused and/or neglected to confirm the claimants to permanent and pensionable status;

(c) That the respondents had unlawfully withheld the claimants' salaries for April and May, 2020 and has not remitted National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF) contributions to the relevant authorities hence causing the claimants distress during the COVID 19 pandemic.

(d) That the respondents are on the verge of dismissing and/or terminating employment of all the claimants.

(e) That a new employment contract has been circulated to all the casual employees to sign failing which their employment would be terminated.

(f) That application be granted.

5. The respondents filed a replying affidavit sworn to by Christopher Rusana, the County Secretary of the 1<sup>st</sup> respondent who deposes *inter alia*:-

(i) That the claimants are employed on fixed term contracts that are renewed from time to time.

(ii) That the applicants are merely arm twisting the 1<sup>st</sup> respondent to renew their contracts,

(iii) That it is not true that the 1<sup>st</sup> respondent has not paid salaries of April and May, 2020 to the Applicants.

(iv) That the contract of the claimants expire on 31/5/2020 and same cannot be extended by the Court as that is a matter before the parties.

(v) That the application is an abuse of Court process and same be dismissed with costs.

6. The claimants filed Supplementary Affidavit sworn to by the 1<sup>st</sup> applicant who traverse the deposition in the replying affidavit and states that the claimants have refused to sign the new 3 months' contracts and they have since been summarily dismissed from service.

7. The Supplementary affidavit was filed on 19/6/2020.

8. It is apparently clear therefore that the dispute between the parties involves summary dismissal and or termination of employment which may only be resolved upon hearing the parties on the merit.

9. The issue whether or not the claimants have been unlawfully or unfairly kept in casual employment for a period of five (5) years is also a factual dispute that needs to be canvassed on merits.

10. The respondents have put out a defence that the claimants have always served under fixed term contracts that expired and were renewed from time to time.

11. It is in the interest of justice that the matter proceed to hearing on the merits since these matters cannot be resolved at the interlocutory stage.

12. Accordingly, the application lacks merit and is dismissed with costs in the cause.

**Dated and delivered at Nairobi this 18<sup>th</sup> day of February, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. 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 18 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.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Vincent Olando for the Claimants/Applicants

Odhiambo Oronga & Co. Advocates for the respondents

Chrispo: Court clerk.