



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. E434 OF 2021**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT**

**VERSUS**

**G4S KENYA LIMITED.....RESPONDENT**

**RULING**

1. The notice of motion dated 25<sup>th</sup> May, 2021 by the claimant/applicant seeks an order in the following terms:-

**1. Spent**

**2. Spent**

**3. That pending the hearing and determination of this cause this Honourable Court do issue stay order restraining the Respondent from executing its intention of unlawful termination.**

2. The application is premised on grounds set out on the face of the Notice of Motion the nub of which is that on or about 10<sup>th</sup> May, 2021, the respondent served security guards in its employment with letters dubbed “**Notice of Redundancy**” advising that their positions will become redundant and their employment shall stand terminated with effect from 10<sup>th</sup> June, 2021. That the respondent has failed to follow the mandatory provisions of Section 40(1) of the Employment Act, 2007 in that there was no consultation on the selection criteria and the reasons for the decision. This is buttressed in the supporting affidavit of one Isaac G.M. Andabwa, the National General Secretary of the claimant to which the notices of redundancy are attached and a response to the Human Resource Director of the Respondent by the claimant union.

5. The application is opposed vide grounds of opposition dated 8<sup>th</sup> June, 2021 and replying affidavit of Eliza Sitimah sworn to on the even date and a further affidavit of the said Elijah Sitimah sworn on 11<sup>th</sup> June, 2021.

6. The respondent states that it issued redundancy notices to 391 employees on various dates between 10<sup>th</sup> May, 2021 and 1<sup>st</sup> June, 2021. That between that time and 30<sup>th</sup> June, 2021, the respondent has recalled 192 redundancy notices and the rest numbering 199, have served their statutory notices and have left employment.

7. The redundancy process has been completed and the orders sought are now moot and should they be granted would be in vain.

8. That the redundancies were based on genuine operational grounds and procedures under Section 40 of the Employment Act were followed.

9. The Court has considered the rival arguments in the application; replying affidavits and written submissions and is satisfied that the applicant has failed to establish the prerequisites of grant of interim injunction set out in the case of **Giella –vs- Cassman Brown Co. Ltd. – 1973 E.A. 358** in that the claimant has not established a *prima facie* case with a probability of success; that the claimant is likely to suffer irreparable harm if the interim injunction is not granted since appropriate reliefs are also sought in the statement of claim for grant upon hearing of the suit on the merit and that the horse has already bolted and the interim orders if granted at this time will serve no useful purpose.

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

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2021**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

M/s Wanyama for Mr. Wati for Claimant

M/s Sogok for Makori for Respondent

Ekale – Court Assistant