



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 196 OF 2020**

**WATSON WANJOHI KAMBO.....CLAIMANT**

**VERSUS**

**SAGEMCOM KENYA LIMITED.....RESPONDENT**

**RULING**

1. On or around 4 April 2017, Sagemcom Kenya Ltd (Respondent) offered Watson Wanjohi Kambo (applicant) the position of Head of Operations for an indefinite time.
2. The applicant served the Respondent until 17 April 2020, when the Respondent issued him with a notice informing him of the termination of his contract on account of redundancy. The redundancy was to take effect on 17 May 2020.
3. The applicant sought legal advice and on 4 May 2020, his legal advisers made a formal demand to the Respondent, alleging wrongful termination of employment.
4. The demand was followed with the instant proceedings on 15 May 2020, in which the applicant sought orders
  1. ...
  2. **THAT** pending the *inter partes* hearing and determination of this application, a temporary injunction be and is hereby issued stopping the Respondent from terminating the Claimant's employment on account of redundancy.
  3. **THAT** pending the *inter partes* hearing and determination of the main suit, a temporary injunction be and is hereby issued stopping the Respondent from terminating the Claimant's employment on account of redundancy.
  4. **THAT** costs of this application be provided by the Respondent.
5. When the application was placed before the Court *ex-parte* on the same day, it directed that it be served upon the Respondent and directions be given on 19 May 2020.
6. On 19 May 2020, the Court directed the parties to file and exchange affidavits and submissions.
7. The Respondent filed two replying affidavits and submissions in opposition to the application on 9 June 2020 while the applicant filed a further affidavit and supplementary submissions on 10 June 2020.
8. The reasons/grounds advanced by the applicant in seeking the order of injunction stopping the termination of his employment on account of redundancy were that there was no genuine restructuring within the Respondent and its parent in France; he was the only employee of the Respondent served with a redundancy notice and therefore he had been targeted with a predetermined decision; that the real reason for the termination notice was a consequence of disagreements he had with the Respondent's Managing Director; that he was not consulted before the decision and that the Respondent had previously used restructuring to dismiss other employees.
9. In defending the decision to declare the applicant's position redundant, the Respondent's Managing Director averred among other reasons that the Respondent had been undergoing difficult business environment over the past year due to loss of contracts and therefore had been forced to adjust its business model as a consequence of which it had not renewed contracts of some 5 employees between December 2019 to March 2020; the applicant himself had noted the need to restructure and not renew certain contracts through emails of 6 January 2020 and 9 January 2020; that applicant was notified of restructuring through a letter dated 16 March 2020, and all staff including the applicant were invited to attend a meeting on 17 March 2020; that another employee considered for redundancy had resigned; that the applicant was called for a follow-up meeting on 21 April 2020 but declined to attend and that all lawful procedures were complied with.

10. The Court has considered the motion, affidavits and submissions on record.
11. The Court is dealing with an interlocutory application and, therefore, it will not delve into disputed facts which require interrogation, such as whether there existed valid and fair operational requirements to warrant the termination of the applicant's employment.
12. The test a party seeking an injunctive order should meet to succeed was set out in the case of ***Giella v Cassman Brown (1973) EA 358***. The test as set out therein is that the applicant is required to establish a *prima facie* case with a probability of success, demonstrate a likelihood of irreparable injury being occasioned if the order of injunction is not granted, and inadequacy of damages to compensate for any resultant loss.
13. The applicant was in a *contract of service* with the Respondent. He was serving at the top echelons. There are records to show that he was aware as early as January 2020 of the challenges facing the Respondent.
14. There is also material to show the applicant was issued with a redundancy notice in March 2020 and was invited more than once to meetings to discuss the way forward.
15. Further, the applicant has hinted at bad blood with the Respondent's Managing Director.
16. The question, therefore, begs whether, under these circumstances, it would be in order to issue the order sought by the applicant.
17. Essentially, granting the order sought by the applicant would be tantamount to granting an order of specific performance in ordinary employment. Specific performance can be ordered only in very exceptional circumstances.
18. In cases of unfair termination of employment, the Court has been clothed with the authority to order reinstatement, re-engagement or compensation.
19. The applicant did not show that compensation/damages would not be adequate were the Court to find in his favour or that there were exceptional circumstances to order part or specific performance at an interlocutory stage.
20. The applicant also came to Court at the tail end of the notice issued to him (2 days were remaining). The notice has already taken effect.
21. In consideration of the above, the Court declines to allow the motion. It is dismissed.
22. Costs in the cause.

**Delivered through Microsoft teams/email, dated and signed in Nairobi on this 19<sup>th</sup> day of June 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant      Oundo Muriuki & Co. Advocates

For Respondent    Mutwiri & Mwongera Co. Advocates

Court Assistant    Judy Maina