



**REPUBLIC OF KENYA**

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

**CAUSE NO. 21 OF 2014**

**SAMUEL OGONJI & 31 OTHERS.....CLAIMANT**

**VERSUS**

**KISUMU COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**KISUMU COUNTY PUBLIC SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Notice of Motion application dated 10<sup>th</sup> May, 2020 and filed on 11<sup>th</sup> June, 2020 seeks an Order in the following terms: -

**(a) That a temporary injunction be granted restraining the respondent through its servants and/or agents from recruiting, removing and or interfering with the claimants' employment in any manner whatsoever until the application is heard and determined.**

2. The application is founded on the grounds set out on the face of the application including that the Court delivered judgment on 19/10/2017 and the Claimant was ordered to immediately issue the claimants with letters of appointment absorbing them into regular terms of employment with effect from 1st November, 2017.

3. The respondents were also ordered to pay the Claimants costs assessed at a global figure of Kshs. 500,000. The respondents were granted 30 days to implement the decree duly served on them.

4. That the Respondents have not issued the claimants with letters of appointment nor has it paid them salary.

5. That the Respondents have also failed to pay the assessed costs.

6. The application is opposed vide a replying affidavit of Godfrey Kigochi the Secretary of the respondents in which he deposes *inter alia*:-

**(a) That the respondents have not refused to abide by the Court Order.**

**(b) That most of the claimants/applicants received their letters, signed their contracts and have been working since last year.**

**(c) A list of the employees who have picked their letters is attached marked "CGK1".**

**(d) That the costs assessed have also been factored in the budget of 2020/2021 financial year and shall be paid accordingly.**

**(e) That the application is benefit of truth, it is an abuse of Court process and it be dismissed.**

**Determination**

7. Both parties filed submissions in support of the application. The applicant did not file a further affidavit refuting the facts deposed to by the respondents in the replying affidavit.

8. The applicant has also failed to establish any nexus between the judgment sort to be enforced with the prayer seeking injunctive relief to stop the respondents from recruiting undisclosed employees into their cadre.

9. The matter concerning employment of the claimants/respondents is *res-judicata* and should not be regurgitated before the same Court.

10. To the contrary, the respondents have demonstrated that they have partly complied with the Orders of the Court and have made provision for payment of costs in further compliance with the judgment and decree of the Court.

11. The criteria of granting interim relief set out in **Gielle –vs- Cassman Brown Company Limited (1973) E.A. 358** of establishing a prima facie case with probability of success and that the applicant will suffer irreparable loss that damage cannot make good has not been met at all by the applicant.

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

**Dated and delivered at Nairobi this 17<sup>th</sup> day of December, 2020.**

**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**

Mr. Mwamu for Claimants/Applicants

Simiyu, Opondo, Kiranga & Co. for respondents

Chrispo – Court clerk