



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE 586 OF 2019**

*(Before Hon. Lady Justice Hellen S. Wasilwa on 30<sup>th</sup> October, 2019)*

**EDWIN MANYASA ANGILA.....CLAIMANT**

**VERSUS**

**THE MAKINI SCHOOL LIMITED.....RESPONDENT**

**RULING**

1. The Application pending for determination before me is the Notice of Motion Application dated and filed in Court on 5<sup>th</sup> September, 2019. The same is filed under Section 10 of the Judicature Rule 3 (2) of the High Court Practice and Procedure Rules and Section 12 of the Employment Act, 2007 and all enabling provisions of the Law.

2. The Application seeks the following Orders **THAT**:-

- 1. This motion be admitted for hearing during the current summer vacation.*
- 2. Pending hearing and determination of this suit the applicant be allowed to discharge his duties as per the Managing Director's letter dated 19/7/2019 and in default do issue certificate of service to the Applicant.*
- 3. The Respondent be restrained not to fill the position of the Applicant herein pending hearing and determination of this Claim.*
- 4. This Claim be heard on priority basis together with Cause No. 491 of 2019 and 527 of 2019 pending inter-parties hearing of applications on 6/9/2019.*
- 5. Pending the hearing and determination of this Claim together with the aforesaid suits the status quo orders granted on 30/7/2019 in Cause No. 491/2019 by this Court do apply to the Claimant.*
- 6. Costs of this Application be provided for.*

3. This Application is premised on the grounds **THAT**:-

- a) The Applicant has been rendered redundant illegally by the Respondent's Human Resources Manager contrary to the director's letter dated 19/7/2019.*
- b) The Respondent's reconstructing process did not affect the teaching fraternity.*
- c) The Respondent has not provided for any open vacancies in its reconstructing process to members of staff in the teaching profession.*
- d) Reconstructing was selectively done and discriminatory in nature.*
- e) Cause Nos. 491 of 2019 and 527 of 2019 are similar to the instant suit as all claims stem from redundancy notice dated 19/7/2019 involving similar Respondent.*

*f) Redundancy notice dated 19/7/2019 was issued when schools had been closed and the Claimant only came to know its existence on 7/8/2019.*

*g) The Claimant on resumption of duties for the 3<sup>rd</sup> term a second notice dated 29/8/2019 was issued despite teaching fraternity not being affected by the reorganisation on going within the establishment of the Respondent.*

*h) No basis at all was offered to the Claimant why two parallel notices had been issued by Human Resource Manager alone in the teaching profession.*

*i) The Claimant had worked for the month of August, 2019 and was entitled for full salary but the respondent has withheld the same for no apparent reasons.*

*j) As other matters are running it is prudent to hear this cause together with them as the subject matter is the same and hence the urgency.*

4. The Application is further supported by the Affidavit of **EDWIN MANYASA ANGILA** sworn on 5<sup>th</sup> September, 2019, in which he reiterates the averments made in the Notice of Motion Application.

5. The Respondent opposed the Application by filing a Replying Affidavit deponed by **BETH WAITITU**, the Human Resource Director of the Respondent herein on 23<sup>rd</sup> August, 2019 and filed in Court on the same date, in which she contends that the instant Application ought to be dismissed as the Respondent has fully complied with the law both procedurally and substantially in carrying out the redundancy process.

6. It is further deponed that in the year 2018 the Respondent was wholly acquired by a consortium of international schools and that the change in management only meant realignment of the Respondent.

7. She contended that on 29<sup>th</sup> January, 2019, the Respondent sent a notice of the then impending redundancy of some of its employees to the Labour Office as required by the Employment Act. Subsequently the school did notify all its employees of the planned implementation of the staff reorganisation plan, explaining the impending Human Resources changes and how the said changes would affect them.

8. She further contended that another notice was issued to the affected employees on 19<sup>th</sup> July, 2019 and that it did abide by the mandatory provisions on redundancy as provided under Section 40 of the Employment Act, 2007 at all times during the process of redundancy. She further contended that it has fully paid all the redundancy dues payable to the Claimant.

9. The Respondent contends that it has at all times acted in the best interest of its employees and other stakeholders. It is further the Respondent's contention that the instant Application has been brought in bad faith and is only meant to tarnish the Respondent's name.

10. In conclusion, the Respondent urged this Honourable Court to dismiss the instant Application for lack of merit.

11. The Application was argued orally on 26<sup>th</sup> September, 2019

#### **Submissions by the Parties**

12. It was submitted by the Claimant/Applicant that the instant Application ought to be allowed as prayed as the Respondent failed to follow the mandatory provisions of Section 40 of the Employment Act while declaring his services redundant.

13. The Claimant further submitted that he was the only teacher affected by the redundancy and therefore the same was unfair. The Claimant further contended that the Respondent failed to comply with the restructuring guidelines, which the Respondent was obligated to follow, as teachers were not mentioned among the positions that were to be declared redundant. He further urged this Honourable Court to allow him back to work.

14. In conclusion, the Claimant urged this Honourable Court to allow his Application as prayed.

#### **Respondent's Submissions.**

15. The Respondent on the other hand submitted that the Orders the Claimant seeks in his Application cannot be granted as he is seeking for an Order restraining it from filling his position, which position is non-existent as the same no longer exists in its structure.

16. The Respondent further submitted that it did follow the law while declaring the Claimant's position redundant and that the same was fair procedure having been followed. It is further contended that a total of 30 teachers out of the 213 teachers were declared redundant and that the Claimant's assertion that he was the only teacher affected by the redundancy was therefore not true.

17. The Respondent contended that the redundancy dues owing to the Claimant are ready for collection. It is further submitted that the Claimant is still under the Respondent's employment.

18. The Respondent further contended that the Claimant can be compensated by way of damages in the event the redundancy was not fair.

19. The Respondent further urged this Court to dismiss this application and lift the Orders of 5/9/2019 and that the substantive suit be heard and determined on merit.

20. I have examined the averments of both Parties. I note that an employer has a prerogative for restructure its operations to make them better. Courts only interfere if there is no redundancy situation or where the redundancy has been done unprocedually and not to stall the entire process but put it on the right course.

21. The remedies the Claimant seek here are indeed final orders which if granted at this time may determine the entire claim. The Claimant can also be compensated in damages if the redundancy is established to be unfair.

22. I therefore find the prayers sought are not tenable. I deny the Applicant prayers sought and also discharge the interim orders granted on 5/9/2019.

23. The Claimant should however be paid his pending salary upto the date of this Ruling. The rest of the prayer to be canvassed in the main claim.

24. Costs of this application to be in the cause.

**Dated and delivered in open Court this 30<sup>th</sup> day of October, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Andiwo for Respondent – Present

Claimant in person- Present