



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2433 OF 2017

SOSTEN KIPRUTO KERICH

CLAIMANT

v

THE MONARCH INSURANCE CO. LTD

RESPONDENT

RULING

1. Through a letter dated 13 June 2017, the Monarch Insurance Co. Ltd (Respondent) appointed Sosten Kerich (applicant) as a Regional Business Development Manager.
2. In terms of clause 3 of the contract, the applicant was to serve 6 months on probation, during which period either party could terminate the contract by giving 7 days' notice or pay in lieu of notice.
3. On 29 November 2017, the Respondent wrote to the applicant informing him that due to change of strategy, it had been decided to eliminate the position of Regional Business Development Manager.
4. The applicant being aggrieved instituted legal proceedings against the Respondent alleging that the termination on account of redundancy was unlawful/unfair.
5. Filed together with the Memorandum of Claim was a motion under certificate of urgency seeking

1). ..

2) **THAT** the Respondent be restrained from recruiting, filling up the position of a Regional Business Development Manager and or replacing the Claimant.

3) **THAT** the Honourable Court be pleased to grant temporary injunction restraining the Respondent, its servants, agents, employees or any person duly authorised by to act on their behalf from replacing, removing and/or interfering with the Claimant's employment in any manner whatsoever, and he be reinstated unconditionally in want of strict compliance of section 40 of the Employment Act until this application is heard and determined *inter partes*.

4) **THAT** the Respondent be ordered to release to the Claimant his November pay being gross pay of KSHS 390,000/ forthwith.

5. An order that intended redundancy/or the redundancy of the Claimant is unlawful, unprocedural, irregular and in want of strict compliance of section 40 of the Employment Act, and therefore ***null and void ab initio and the Claimant is hereby REINSTATED*** at work unconditionally without loss of benefits as contracted while the Respondent, its servants, agents, employees or any person duly authorised by to act on their behalf are hereby restrained from replacing, removing and/or

interfering with the Claimant employment in any manner whatsoever on account of **REDUNDANCY** without following out due process under section 40 of the Employment Act and all other written laws.

6. **THAT** costs be provided for.

6. When the application was placed before Court on 11 December 2017, the applicant was directed to serve the Respondent for hearing on 24 January 2018.

7. On 24 January 2018, the Respondent sought for time to file a response to the application and it filed a replying affidavit sworn by its Claims and Legal Services Manager on 7 February 2018.

8. When the application was called out during the call over on 13 February 2018, the Court directed that it would hear the parties, but for unexplained reasons, the applicant's advocate was not in Court when the file was reached.

9. The Court allowed the Respondent to make oral submissions.

10. The Court has considered the material placed before it.

11. It is not disputed that the applicant's contract was brought to an end through a letter dated 29 November 2017.

12. In prayers 3 and 5 the applicant is essentially seeking that he be reinstated unconditionally at the interlocutory stage.

13. Reinstatement is primarily a final remedy which is granted after parties have been heard on the merits, more so in employment underpinned by a statute of general application (the Employment Act, 2007).

14. Legally, therefore it is not legally prudent to order reinstatement at the interlocutory stage. If the applicant were to succeed after a hearing on the merits and after hearing from the parties on the utility and practicability of reinstatement, the Court will be in a position to make an appropriate and effective order.

15. Flowing from the above, the Court will not interfere with the Respondent's managerial prerogative as to how to run its business.

16. The upshot being that the Court orders that the application dated 6 December 2017 be dismissed with costs to the Respondent.

Delivered, dated and signed in Nairobi on this 15th day of February 2018.

Radido Stephen

Judge

Appearances

For Applicant Okemwa & Co. Advocates

For Respondent Ms. Ngige instructed by Soklaw Advocates

Court Assistant Lindsey