



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1928 OF 2017

SYLVIA KIIRU 1ST CLAIMANT/APPLICANT

JOHN ONYANGO 2ND CLAIMANT/APPLICANT

GEORGE SANDE 3RD CLAIMANT/APPLICANT

MOSES MWAURA 4TH CLAIMANT/APPLICANT

JONATHAN OTIENO 5TH CLAIMANT/APPLICANT

CARLOS WAIGANJO 6TH CLAIMANT/APPLICANT

GEORGE MAGHANI 7TH CLAIMANTS/APPLICANT

VERSUS

FUND ACCOUNT MANAGER, MAKADARA CONSTITUENCY...1ST RESPONDENT

CAMP TOYOYO SELF HELP GROUP 2ND RESPONDENT

RULING

Introduction

1. The Claimant where employed by the Respondents for 3 years contract from 1.7.2016. By the first Respondent's letter dated 31.8.2017, their services were terminated with effect from 1.9.2017

2. Aggrieved by the turn of events, the Claimants brought this suit on 28.9.2017. In addition they filed Notice of Motion dated the same date seeking injunction to stop the termination or implementation of their termination letter dated 31.8.2017. They also sought to restrain the Respondent from victimizing or discriminating them or in any other way interfering with their employment pending the hearing and determination of the suit.

3. The Respondents have not opposed the motion and instead Mr. Wycliffe Indalu, a Director of the 2nd Respondent swore a Replying affidavit expressing his surprise to the termination of the Claimant's employment. He further deposed that the decision was made by the 1st Respondent without consulting him. According to him the election of a new member of National Assembly should not affect the activities of the 2nd Respondent as a self-help group

Analysis and Determination

4. The issue for determination herein is whether the Applicants have met the threshold from granting interlocutory injunction. The threshold for grant of interlocutory injunction was established by *Giella Vs Caseman Brown* where it was held that:

- a. The applicant must prove a *prima facie* case with probability of success.
- b. The applicant must prove that if the order is withheld, he will suffer irreparable harm.
- c. If the Court is in doubt, the application is to be determined on a balance of convenience.

5. As herein above observed, the motion is not opposed by the defence. However, after careful consideration of the materials presented to me, I find that the motion is already overtaken by events. There is no doubt that the authority that appointed the Claimants is the same person that dismissed them. The termination letter are dated 31.8.2017 and they took effect from 1.9.2017. Although it was alleged from the bar that they are still in service, I find that to be highly incomprehensible in the face of the said express termination letters. Consequently, I decline to grant the orders sought and direct the Claimant to fix the case for hearing of the main suit on priority basis.

Disposition

6. The Notice of Motion dated 28.9.2017 is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 2ND DAY OF MARCH, 2018

ONESMUS MAKAU

JUDGE