



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1286 OF 2017

(Before Hon. Justice Mathews N. Nduma)

GIDEON KOSGEI KORIR CLAIMANT

VERSUS

KENYA NATIONAL FARMERS FEDERATION..... RESPONDENT

R U L I N G

1. By a Notice of Motion Application dated 17th July, 2017 and filed on even date the Claimant/Applicant seeks issuance of a mandatory order of injunction compelling the Respondent to pay the Claimant outstanding salary arrears in the sum of Kshs.1,755,000 or such sum that its Respondent does not dispute.
2. The application is opposed vide a replying affidavit filed on 24th October, 2017 in which the Respondent admits that the Claimant/Applicant is the employee but denies that it owes the applicant arrear salary for over 20 months as alleged or at all.
3. The Respondent states that it has not received from the applicant any demand or complaint whether verbal or written concerning delay or unpaid salary. Indeed no such letter of demand is attached to the application.
4. A mandatory injunction is akin to a Malera injunction at common law and it is granted to conserve the status quo in a very clear case, for the reason that it is summary in nature and determines the cause of action at an interlocutory stage.
5. In **NIC Bank Limited vs General Motors East Africa Limited & Another [2014] eKLR**, the court cited the case of **Locabail International Finance Limited vs Agro-Export & Another [1986] 1ALL ER 901** where it was held as follows:-

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could easily be remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory injunction the court had to feel a high sense of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”
6. The present case does not present such definite clarity on facts as to give the court the comfort that the facts are indisputable and no possible defence would be available to the suit were the matter to proceed to the hearing on merit.
7. Accordingly, the applicant has failed to satisfy the prerequisites for granting a mandatory injunction and the balance of convenience dictates that the suit proceed to hearing on merit.
8. The Principal Judge to give directions on the hearing and disposal of the main suit accordingly. Costs in the cause.

Dated and Signed in Kisumu this 2nd day of May, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 30th day of May, 2018

Maureen Onyango

Judge

Appearances

Mr. Okoth & Co. Advocates for Claimant/Applicant

Mr. Ayieko for Respondent

Anne Njung'e – Court Clerk