



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 51 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS AND
HOSPITAL WORKERS (KUDHEIHA).....CLAIMANT/APPLICANT**

VERSUS

**THE AGA KHAN UNIVERSITY
HOSPITAL, NAIROBI.....RESPONDENT**

RULING

Respondent herein first issued notice of redundancy on 14th May 2015. The notice was challenged by the claimant herein who obtained an injunction in Cause No. 815 of 2015 restraining the respondent from proceeding with the redundancy pending the hearing and determination of the application. The orders were confirmed in a ruling delivered on 4th June 2015.

On 10th June 2015 the respondent issued another notice of redundancy. The court delivered judgment on 30th November 2015 quashing the notice of 14th May 2015 together with the notice issued on 10th June 2015. The respondent was dissatisfied with the judgment and filed an appeal. The Court of Appeal overturned the decision of this court in the judgment delivered on 19th May 2017.

Upon the judgment of the Court of Appeal being delivered the respondent resumed the redundancy exercise.

On the evening of 18th January 2018 the respondent sent text messages to 322 employees inviting them to attend a meeting on 19th January 2018 at 7.00 a.m. Upon arrival at the meeting the employees were issued with letters declaring them redundant.

In the application dated 22nd January 2018 and filed on the same day the claimant seeks the following orders –

1. That the application be certified urgent, be heard *ex-parte* in the first instance and service thereof be dispensed with.
2. Pending the hearing and determination of the application and/or cause, the court to restraint the respondent from outsourcing and/or continued outsourcing of the services permed by the 322 employees terminated on account of redundancy on 19th January 2018 or any day thereof.
3. Pending the hearing and determination of the application and/or cause, the court to direct and/or compel the respondent to suspend, halt and/or lift the redundancy meter out against 322 employees on 19th January 2018 or any date thereof.
4. The court to refer this dispute for conciliation before the County Labour Officer for Nairobi County.
5. Costs of this application be borne by the respondent.

I granted interim orders restraining the respondent from outsourcing or continued outsourcing pending hearing of the application.

In the replying affidavit of VALENTINE ACHUNGO sworn on 1st February 2018 and filed on the same day, he deposes that the claimant is guilty of deliberate misrepresentation or suppression of material facts. He deposes that a redundancy notice of two months was issued to the claimant and all staff on 14th May 2014, that one of the reasons for redundancy was that the respondent wished to outsource non-core services so that it could concentrate on its core functions. He deposes that the claimant went to court and stopped the process which was only resumed after the Court of Appeal decision.

It is deposed by VALENTINE ACHUNGO that the respondent complied with both Section 40 of the Employment Act and Collective Bargaining Agreement (CBA) signed by the parties. He states that in calculating the terminal dues there may have been some errors which can be addressed.

The parties disposed off the application by way of written submissions.

Determination

I have considered the pleadings and submission filed by the parties. I have further considered the authorities cited among them the decision of the Court of Appeal in Appeal No. 7 of 2016 between the same parties. I have noted that the redundancy that is the subject of the present claim is the same one that was stopped by this court's orders in Cause No. 815 of 2015 that was set aside in Appeal No. 7 of 2016. We cannot start the process all over again.

The first prayer in the application is to restrain the respondent from outsourcing and/or continued outsourcing. This issue is only mentioned in passing in the affidavit of ALBERT NJERU at paragraph 16 where he deposes –

“That through the official notice of redundancies resulting for alleged restructuring dated 19th January 2018, the respondent indicted that all the services of the employees rendered redundant would be outsourced. It is clear therefore that the positions declared redundant are not superfluous or abolished and therefore the respondent's alleged redundancy does not meet the threshold set out by the law.”

In the replying affidavit it is stated that the outsourced services are housekeeping, laundry, waiters, service attendants, theatre attendants and outreach messengers, that the redundancy entailed elimination of entire departments and there was no selection criteria applied. It is further deposed that the contracts with the third party suppliers were signed in December 2017 and the services commenced on 19th January 2018. This has not been contested by the claimant.

Likewise on the second prayer in the application, the redundancies were effected on 19th January 2018. It is therefore not possible to stop either the outsourcing or the redundancy.

Whether or not the redundancies were done according to the law and the parties CBA is a matter to be addressed at the hearing of the main claim.

For these reasons I find that the application seeks orders that cannot be granted with the result that it is dismissed. Costs shall be in the cause.

In view of the urgency parties are directed to comply and take directions for hearing at the time of delivery of this ruling.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF MAY 2018

MAUREEN ONYANGO

JUDGE