



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 260 OF 2018**

*(Before Hon. Justice Mathews N. Nduma)*

**UNION OF KENYA CIVIL SERVANTS.....CLAIMANT**

**VERSUS**

**1. HOMABAY COUNTY PUBLIC SERVICE BOARD**

**2. COUNTY SECRETARY HOMABAY COUNTY**

**3. THE GOVERNOR HOMABAY COUNTY.....RESPONDENTS**

**R U L I N G**

1. The Applicant seeks an order suspending the operationalization of the notices of termination of the Claimants' members' contracts dated 20<sup>th</sup> April, 2018 and restraining the Respondents from advertising for the positions held by the Claimants' members named pending the hearing and determination of the claim.

2. The application is based on the grounds set out on the face of the Notice of Motion to wit:-

- a. The 2<sup>nd</sup> Respondent has issued back dated notices of termination of the Claimants' members' jobs without authority of the 1<sup>st</sup> Respondent.
- b. The Respondent may at any time advertise for the positions held by the Claimants.
- c. The conduct by the 2<sup>nd</sup> Respondent amounts to unfair labour practice since the employees were not given any hearing.

**Response**

3. The Respondents filed a replying affidavit sworn by Mr. George Illah, Principal Legal Officer of the Respondents. He states that the employees were illegal ghost employees and their application has no merit. That termination notices were issues to stop spiraling wage bill of the Respondents that had arisen due to irregularities and collusion of the employees.

4. The Respondents pray that the application be dismissed with costs.

**Determination**

5. For an application for interim injunction to issue, the applicant must satisfy the requirements set out in the case of **Giella vs Cassman Brown** by –

- i. Establishing a prima facie case with probability of success.
- ii. By showing that the applicants are likely to incur irreparable loss if the injunction is not granted and
- iii. The balance of convenience favours the grant of the injunction.

6. The Claimant presented letters of appointment of the grievants and notices of termination of the appointments. Whereas the letters of appointments produced bear signatures and the names of the author, all the letters of termination annexed to the application are incomplete

and do not show the persons who wrote them.

7. Secondly, the purported terminations were with effect from 1<sup>st</sup> July, 2018 and the letters of termination are dated 20<sup>th</sup> April, 2018. It is therefore not correct to say, as was submitted by counsel for the Applicants that the terminations were backdated.

8. Furthermore, the Application was filed on 12<sup>th</sup> July, 2018 after the termination letters had taken effect.

9. Courts of equity do not issue injunctions in vain. The horse had already bolted from the Kennel by the time the application for injunction was filed.

10. The prayer as framed, amounts to reinstating the grievants to their positions before the hearing and determination of the suit.

11. Accordingly, the balance of convenience in this case is for the suit to be heard and determined on merits before any orders are issued if at all, in favour of the grievants.

12. The application is dismissed with costs.

**Dated, Delivered and Signed in Kisumu this 20<sup>th</sup> day of December, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Nyamwea for Claimant/Applicant

M/s Adoyo for Respondent

Chrispo – Court Clerk