



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1858 OF 2016

CONSOLIDATED WITH

CAUSE NO 1859 OF 2016

AND

CAUSE NO 1860 OF 2016

AND

CAUSE NO 1861 OF 2016

AND

CAUSE NO 1862 OF 2016

AND

CAUSE NO 1863 OF 2016

AND

CAUSE NO 1864 OF 2016

JULIANA NDANU MUENDO.....1ST CLAIMANT
JACOB WAMALWA WERUNGA.....2ND CLAIMANT
THOMAS OUNDO PAMBA.....3RD CLAIMANT
ELIZABETH NDINDA MUTHOKA.....4TH CLAIMANT
GEOFFREY WANGA KACHISA.....5TH CLAIMANT
EVANS OTIENO.....6TH CLAIMANT
VINCENT BIRUNDU OMURWA.....7TH CLAIMANT

VS

BEVERLY SCHOOLS OF KENYA LIMITED.....RESPONDENT

RULING

1. The Claimants' application brought by Notice of Motion dated 28th September 2016 and filed in Court on 29th September 2016 seeks an order directing the Respondent to pay the Claimants their salaries for the months of June, July and August 2016.

2. The Claimants further seek an order directing the Respondent to release money deducted from them on account of Octagon Pension Scheme and E-Kenya Cooperative shares.

3. The application which is supported by an affidavit sworn by the 3rd Claimant, Thomas Oundo Pamba on 28th September 2016 is based on the following grounds:

a. That the Claimants were employed by the Respondent as teachers;

b. That the Claimants faithfully carried out their duties and were duly confirmed in their positions;

c. That on 18th August 2016, the Respondent who had for the previous three

3. months not paid all its teachers, terminated the Claimants' employment.

4. The Respondent's response is contained in a replying affidavit sworn by its Executive Director, Alice Agam Mudiri. She denies that the Claimants had performed their duties diligently and adds that the Claimants had been paid all their dues.

5. The issue for determination in this application is whether the Claimant has made out a case for grant of the interlocutory orders sought. The orders sought are in the nature of a mandatory injunction and the question is therefore whether there exists exceptional circumstances to warrant grant of these orders at the interlocutory stage. The Court was referred to the decision by **Abuodha J** in ***Peter Wanyama Ojiambo v Technical University of Kenya & 2 Others [2016] eKLR*** where the learned Judge held that payment of salary arrears is in the nature of an interlocutory mandatory injunction which is only available in exceptional circumstances. This is the law as I understand it.

6. From the pleadings filed in Court, the issues of salary arrears and unremitted deductions are contested. The effect is that the parties will need to call evidence in support of their respective cases. For this reason, the orders sought cannot be granted at the interlocutory stage.

7. The Claimants' application therefore fails and is dismissed. The costs of the application will be in the cause.

8. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20TH DAY OF JANUARY 2017

LINNET NDOLO

JUDGE

Appearance:

Miss Muhanda for the Claimants

Mr. Farrah for the Respondent