



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT OF KENYA AT NAIROBI**

**PETITION NO. 62 OF 2015**

**THE PUBLIC SERVICE COMMISSION.....1<sup>ST</sup> PETITIONER/APPLICANT**  
**THE CABINET SECRETARY MINISTRY OF LABOUR**  
**SOCIAL SECURITY AND SERVICES.....2<sup>ND</sup> PETITIONER/APPLICANT**  
**MINISTRY OF DEVOLUTION ..... 3<sup>RD</sup> PETITIONER/APPLICANT**  
**THE TEACHERS SERVICE COMMISSION .....4<sup>TH</sup> PETITIONER/APPLICANT**  
**THE CABINET SECRETARY MINISTRY OF EDUCATION ..... 5<sup>TH</sup>**  
**PETITIONER/APPLICANT**

**VERSUS**

**TRADE UNION CONGRESS OF KENYA.....1<sup>ST</sup> RESPONDENT**  
**TOM ODEGE, THE CHAIRPERSON, TRADE UNION**  
**CONGRESS OF KENYA ..... 2<sup>ND</sup> RESPONDENT**  
**WILSON SOSSION, THE SECRETARY GENERAL,**  
**TRADE UNION CONGRESS OF KENYA ..... 3<sup>RD</sup> RESPONDENT**  
**THE NATIONAL HOSPITAL INSURANCE FUND.....1<sup>ST</sup> INTERESTED PARTY**  
**THE COUNCIL OF GOVERNORS ..... 2<sup>ND</sup> INTERESTED PARTY**

**M/S Mbilo for petitioners**

**Mr. Nyanyuki for 1<sup>st</sup> and 2<sup>nd</sup> respondents**

**Mr. Mbaluto for 3<sup>rd</sup> respondent**

**Mr. Otieno for 1<sup>st</sup> interested party**

## RULING

1. The notice of motion dated 2<sup>nd</sup> July 2015 and filed on same date was heard *ex parte* and interim orders granted in terms of prayers 1, 2 and 3 of the notice of motion.
2. Only orders 4 and 5 to the effect that there be a temporary injunction restraining the respondents from commencing and participating in any form of industrial action pending the hearing and determination of the petition are pending determination.
3. The application is based on the grounds set out on the face of the application and in the supporting affidavits sworn by Simon K. Rotich, Amb. Rachel Omamo and Nancy Macharia. The application is augmented by submissions by the applicants and the 1<sup>st</sup> interested party. The application is opposed vide a replying affidavit of the 3<sup>rd</sup> respondent and written submissions by the 1<sup>st</sup> and 3<sup>rd</sup> respondents.
4. The main issue for determination is whether the applicants have met the threshold for the grant of temporary injunction as articulated in the landmark case of **Giella V. Cassman Brown Co. Ltd. [1973] E.A. 358 – 360** that;

the applicant must establish;

- i. a prima facie case with probability of success;
  - ii. the applicant is likely to suffer injury / damage that cannot adequately be remedied by an award of damages;
  - iii. the balance of convenience favours the grant of the interim relief.
5. With respect to the first requirement the applicants have demonstrated that they have an arguable case that the respondents did not comply with part X of the Labour Relations Act, No. 14 of 2007 under which the calling of strikes and lock-outs are regulated.
  6. The relevant sections include sections 76, 77 and 78 of the Act. To this extent, the applicants have established a *prima facie* case with a probability of success. This finding is sufficient to warrant grant of a temporary injunction in terms of prayers 4 and 5 of the notice of motion restraining the respondents from commencing and participating in any form of industrial action pending the hearing and determination of the petition.
  7. A protected strike, is a constitutional right of employees and employers in terms of Article 41 of the constitution of Kenya, 2010 and ILO convention 87 and 89 on freedom of association and collective bargaining. This right and freedom must however be exercised within the statutory guidelines otherwise, the Labour Relations Act, 2007 would be rendered otiose.
  8. The second and third considerations are in favour of granting the orders sought by the applicants.
  9. The court has refrained from getting into the merits or otherwise of the petition at this stage. This must await the full hearing and determination of the case.
  10. Accordingly, the application is granted with costs in the cause.

**Dated and delivered at Nairobi this 22<sup>nd</sup> day of January 2016.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**