



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO 106 OF 2015

BANKING INSURANCE FINANCE UNION.....CLAIMANT

VERSUS

STANDARD CHARTERED BANK (K) LTD..... RESPONDENT

Mr Odera for Claimant

Mr Obura for Respondent

JUDGEMENT

1. By a statement of claim dated 28th January, 2015, the Claimant sought orders of the court to stop the Respondent from declaring fifteen (15) of the Respondents employees redundant. At the same time the Claimant filed a Notice of Motion seeking interim and inter-locutory reliefs pending the hearing of the main suit.

2. The following reliefs are sought in the main suit;-

i) That the honourable court be pleased to certify this application as being urgent and the same be heard ex-parte in the first instance and service be dispensed with.

ii) That this honourable court be pleased to issue interim ex- parte orders restraining the Respondents from unlawfully and unfairly terminating the services of fifteen (15) unionisable employees who have already been served with redundancy notices pending the hearing and determination of this application inter-parties.

iii) That this honourable court do issue an order prohibiting the Respondents themselves or by their recognized agents or principals for declaring the fifteen (15) employees redundant until this application is heard and determined inter-parties.

iv) That this honourable court do issue an order compelling the Respondents to stop the already envisaged arbitrary, unfair and unlawful redundancies of the fifteen (15) unionisable employees until the laid down process both in the parties **CBA and Section 40 of the Employment Act, 2007** is fully followed.

v) That this honourable court do award costs of this suit in favour of the applicants as aforesaid.

3. The court disposed off inter-locutory proceedings and delivered it's ruling on 21st April, 2015 in which the court declined to grant the injunctive and prohibitory interim reliefs sought and observed that the

Claimant had failed to satisfy it that its claim in respect of the fifteen employees could not be satisfied by payment of compensation.

4. The Respondent has since declared the 15 employees redundant and paid them redundancy benefits as per the parties collective Bargaining Agreement.

5. After the ruling of the court on 21st April, 2015, prayers (i) – (iv) in the memorandum of claim were spent.

6. The main suit subsequently proceeded by way of written submissions in which the parties have made arguments on the lawfulness or otherwise of the already concluded declaration of redundancies of 15 selected employees of the Respondent.

7. The Claimant has not sought to amend the memorandum of claim with a view to introduce any suitable reliefs that the court may award upon hearing of the main suit.

8. It is the court's finding that all the prayers sought in the memorandum of claim dated 28th January, 2015 were spent in the ruling of the court delivered on 21st April, 2015 and have since been overtaken by events. The Court cannot therefore grant orders that have not been pleaded in the memorandum of claim. The Claimant must stand or fall on its pleadings.

9. Consequently the main suit is misconceived and is dismissed for want of any suitable relief sought by the Claimant.

10. The court makes no order as to costs of the suit.

Dated and delivered in Nairobi this 1st day of April, 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE