

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
OF KENYA AT NAIROBI
CAUSE NO. 1220 OF 2013

FATUMA ALI ASMAN.....CLAIMANT

VERSUS

DE LA RUE CURRENCY & SECURITY PRINT LTD.....RESPONDENT

RULING

1. The objection taken by Mr. Leshan is to effect that the counsel for the Claimant is asking irrelevant questions which are no in tune with his pleadings. Mr. Leshan sought to have the objection upheld as what Mr. Kimakia was bringing out was totally different from the plea he had made. He submits that the questions put are to him an alteration of the case from the bar and thus objectionable.

2. Mr. Kimakia on his part submits that he is trying to establish the issue of constructive redundancy and thus was trying to demonstrate that the Respondent opted for summary dismissal for flimsy reasons once it realized that it would pay a hefty sum in redundancy pay outs. He submitted that it was on that basis that he sought to demonstrate there was a pattern of summary dismissals as a way of countering the business turbulence the Respondent was going through. He stated that it was only by bringing out the details of other employees dismissed summarily that he could bring thus out to the Court.

3. The assertion that the case for the Claimant is morphing is not entirely true granted the pleadings before Court. In particular, the statement of claim at paragraphs 13,14 and 15 suggests that there is a unforeseen hand in the dismissal. Mr. Leshan objects to the line of questioning and submits the Claimant's counsel should not have such a foray. On his part, Mr. Kimakia submits the only way to demonstrate the pattern of dismissal is by placing the question he has put to the witness.

4. If indeed, there was dismissal on account redundancy and the Court is yet to make any such finding, the most appropriate way to bring to the Court's attention the nature of dismissal. Probing and uncomfortable questions such as has been placed before the witness would be apt. She is the correct person to answer if there was any other dismissal that could demonstrate the aspects of redundancy pleaded in paragraphs 13, 14 and 15 of the claim.

5. The Respondent in its defence also pleaded that redundancy notices were issued because it intended to declare redundancies in conformity with Section 40 of the Employment Act and that the issuance to the Claimant of the said notice did not mean she would be declared redundant. The pleadings at para 33(a), (b),(c),(d),(e),(f) and (g) as well as para 34 and 35 of the Defence are instructive.

6. The Court therefore declines to uphold the objection and orders that the witness answer the question put in relation to the aspect of redundancies anticipated.

It is so ordered.

Dated at Nairobi this 29th day of June 2016.

Nzioki wa Makau

JUDGE