



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1654 OF 2016

OLIVE ANN WAHURA THIONG'O.....CLAIMANT

VERSUS

WORLD WIDE FUND FOR

NATURE-

Regional Office for Africa.....RESPONDENT

RULING

1. This ruling proceeds from the Claimant's application brought by way of Notice of Motion dated 17th August 2016 and filed in Court on 18th August 2016. The application seeks an order restraining the Respondent from advertising, interviewing job applicants, recruiting and/or in any way filling the positions of Communications Manager or any similar position in the Respondent's establishment.

2. The application, which is supported by the Claimant's affidavit is based on the following grounds:

- a) That the Claimant who was working as Campaigns and Engagement Manager of the Respondent was unlawfully and fraudulently declared redundant;
- b) That by letter dated 2nd June 2016, the Respondent terminated the Claimant's contract of employment;
- c) That the termination was unlawful and unfair and an advertisement of similar positions, bearing the same roles and competencies shows lack of evidence that the Claimant's role or skills were no longer required at the Respondent;
- d) That the Claimant only saw the advertisement for the similar positions of Communications Manager a week prior to coming to Court and despite demands that the recruitment be put on hold, the Respondent had failed to respond to the Claimant's letters;
- e) That the Claimant filed the application upon discovery of the job advertisement for the positions of Communications Manager that have the same roles as those of the position previously held by her;
- f) That the Respondent is in the process of recruiting someone for a similar position and with similar skills and competencies as the Claimant;
- g) That it is only fair that the Respondent is restrained so that the Claimant's rights under the

contract of employment are protected;

h) That the Respondent's action of declaring the Claimant redundant amounts to fraud since her role and competencies are still required.

3. The Respondent's reply is contained in a replying affidavit sworn by its People and Organization Development Manager, Esther Wamoto. She depones that the Respondent is an extension of the WWF International Secretariat based in Geneva, Switzerland.

4. Wamoto further depones that the Claimant was employed as the Respondent's Campaigns and Engagement Manager, Africa on a two year contract of service commencing on 1st October 2015 and terminating on 31st September 2017.

5. WWF International had recently undergone a major organization change with focus on delivering conservation through six goals. The new strategy had also impacted the work delivery models. The global conservation and secretariat changes were approved by the International Board. These changes had necessitated a review of the Respondent's structure as a regional office for Africa towards realignment with global changes.

6. Another factor that had influenced review of the structure was the need to drive efficiency in operations to meet the needs of country offices. As part of this change a number of roles were affected and made redundant including the Campaigns and Engagement Manager's position occupied by the Claimant. Consequently, the Respondent had no option but to declare the Claimant redundant.

7. Wamoto states that the two positions of Communications Manager were prioritized in the new organogram and applications for the two positions had been invited, with the closing date being 19th August 2016. Six hundred applications had been received from a global pool and the recruitment process was at an advanced stage.

8. It is the Respondent's case that the role of Campaigns and Engagement Manager was different from that of Communications Manager. Further, the redundancy had been carried out procedurally and lawfully.

9. The issue for determination in this application is whether the Claimant has made out a case for granting of an order restraining the Respondent from completing the recruitment process for the two positions of Communications Manager.

10. The order sought by the Claimant is in the nature of an interlocutory injunction. The conditions upon which such an order may be granted were well articulated in ***Giella V Cassman Brown & Company Limited [1973] EA 358*** as follows:

a) That the applicant has a *prima facie* case with probability of success;

b) That that if the injunction is not granted the applicant will suffer irreparable harm that would not be adequately compensated by an award of damages;

c) That the balance of convenience tilts in favour of the applicant.

11. The Claimant's application is hinged on her assertion that the advertised positions of Communications Manager are similar to the position of Campaigns and Engagement Manager previously held by her. In support of her assertion, the Claimant produced an analysis of the two positions showing the similarities. The Respondent also produced its own analysis showing the differences.

12. The question then is whether the Claimant has established a *prima facie* case that the advertised position of Communications Manager is the same as the position she held of Campaigns and Engagement Manager.

13. In documenting the functions of her job, the Claimant relied on what she termed as '*day to day functions.*' She however did not produce any source document to support the description of her job as contained in the comparative analysis produced by her. The Court was therefore unable to establish the veracity of her analysis at this interlocutory stage. That being the case, I must find that no *prima facie* case has been established to warrant grant of the injunctive order sought.

14. On the question whether the Claimant would suffer irreparable harm if the injunction is not granted, the Court noted that the Claimant was on a fixed term contract running from 1st October 2015 to 31st September 2017. It would follow therefore that if the Court were to find that the termination of this contract was unlawful, an award for damages would be adequate.

15. Finally in determining where the balance of convenience lies, the Court must consider the effect of stopping the Respondent from filling the positions of Communications Manager which have been declared in the current staff establishment.

16. In *Wilson K.C Shollei v Independent Electoral and Boundaries Commission [2014] eKLR, Onyango J* held that stopping the recruitment of a replacement for the Petitioner would be to interfere with the discharge of the mandate of the IEBC. I think an order barring an employer from carrying out a management mandate such as recruitment should be given after much reflection and with circumspection.

17. Applying this standard and taking into account the foregoing findings, I decline to grant the order sought by the Claimant. The result is that the Claimant's application fails and is dismissed with costs being in the cause.

18. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF SEPTEMBER 2016

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JUDGE

Appearance:

Mr. Wangila for the Claimant

Mr. Burugu for the Respondent