



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 434 OF 2016

ANTHONY GITAU WAWERU

TERESSAH WANGUI WAMBAA

HARRISON MWITURIA MUCHIRI

HARUN MWANGI KARUGA

JOSPHAT NDUNGU MUNGAI

NAZARIO KARIUKI WAMWORIA

DAVID MURIITHI KABIRU

NANCY MUTHONI WAITHAKA

SELESTINO MUTUMA MUTHUKU

LUCY GATHONI MUNGA

JANET WANGUI MUNORU

SIMON MWANGI MUGI

PETER KIHARA

SIMON MBOGO MBURU

CLAIMANTS

v

NYANDARUA COUNTY GOVERNMENT 1ST RESPONDENT

NYANDARUA PUBLIC SERVICE

BOARD

2ND RESPONDENT

PUBLIC SERVICE COMMISSION

3RD RESPONDENT

MINISTRY OF EDUCATION, SCIENCE

RULING

1. The Claimants (ESP Youth Instructors currently on contract) in a motion presented to Court under certificate of urgency on 24 October 2016 sought the following orders

1. THAT this application be certified extremely urgent and leave be granted for the same to be heard ex-parte, service thereof being dispensed with.

2. THAT pending the inter-partes hearing hereof, this Honourable Court be pleased to issue interim orders of injunction barring the 2nd Respondent, whether by themselves or through their agents, servants or employees from illegally interviewing, selecting, recruiting, employing or absorbing new Youth Polytechnic instructors in the Nyandarua County Department of Education and ICT.

3. THAT pending the hearing and determination of this claim, this Honourable Court be pleased to issue interim orders of injunction barring the 2nd Respondent, whether by themselves or through their agents, servants or employees from illegally interviewing, selecting, recruiting, employing or absorbing new Youth Polytechnic instructors in the Nyandarua County Department of Education and ICT.

4. THAT the costs of this application be borne by the Respondents.

2. When the motion was placed before Court, the Court directed that it be served for *inter partes* hearing on 8 November 2016.

3. The Respondents were all served and an affidavit of service sworn by Davidson Warutere Iregi attests to the service.

4. However, when the motion was called out on 8 November 2016, none of the Respondents had placed on record grounds of opposition or replying affidavits (3rd and 4th Respondents did not appear).

5. An attempt by the 1st and 2nd Respondents to secure an adjournment in order to file appropriate responses to the motion was declined though these Respondents were allowed to make oral submissions on points of law.

6. The Court has given due consideration to the motion and grounds in support thereof, the supporting affidavit and oral submissions made in Court.

7. The legal test to be met in an application such as the instant one were set out long ago in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 and need no outlining here.

8. In the present motion, the Claimants, instead of seeking to secure and/or safeguard their individual contracts are seeking an order to restrain the Respondents from employing any more Youth Polytechnic Instructors.

9. Such an order would not only mean the Court is intruding unnecessarily into an employer's discretion to run its business and operations, but also have unintended legal consequences.

10. In any case, the Claimants have not demonstrated which contractual or statutory right the Respondents would be violating in recruiting more Youth Polytechnic Instructors.

11. In the view of the Court, granting the order sought in the circumstances of this case would not be legally tenable or prudent.

12. In the circumstances, the Court finds no merit in the motion dated 21 October 2016 and orders that it be dismissed.

13. Costs in the Cause.

Delivered, dated and signed in Nakuru on this 18th day of November 2016.

Radido Stephen

Judge

Appearances

For Claimants	Mr. Warutere instructed by Warutere & Associates
For 1 st – 2 nd Respondents	Ms. Nyambura, Director, Legal Affairs, County Government of Nyandarua
For 3 rd – 4 th Respondents	did not participate in motion
Court Assistant	Daisy