



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

CAUSE NO. 314 OF 2016

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS, HOSPITALS
& ALLIED WORKERS** **CLAIMANT**

v

MOI UNIVERSITY **RESPONDENT**

RULING

1. The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (KUDHEIHA) moved Court through a motion under urgency on 2 September 2016 against Moi University (Respondent) seeking

1. ...

2. **THAT** this honourable Court be pleased to issue interim orders staying the outsourcing (Tendering process) until this application is dispensed with.

3. **THAT** the Respondent pays the costs of this application.

2. The Respondent's Legal Officer swore and caused to be filed a replying affidavit opposing the motion on 20 September 2016.

3. However, when the motion was urged on 15 November 2016, the Respondent was not present or represented despite the date being scheduled in the presence of its counsel.

4. KUDHEIHA's case is that the outsourcing by the Respondent would lead to job losses by its members. It is further contended that outsourcing is an unfair labour practice.

5. During oral submissions, Mr. Siembo, Industrial Relations Officer with KUDHEIHA urged that the application presented unique circumstances warranting the grant of the order sought.

6. The legal principles appertaining to determination of an application such as the one presented to Court were set out in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358.

7. At this juncture, there is no evidence presented to Court to suggest that the outsourcing by the

Respondent would lead to any redundancies or that the Respondent would not comply with the statutory redundancy provisions as outlined in section 40 of the Employment Act, 2007, or the contractual agreements between the parties (recognition agreement and collective bargaining agreement(s)).

8. In the circumstances, the Court is of the view that the orders sought are not merited.

9. The motion is dismissed with no order as to costs.

Delivered, dated and signed in Nakuru on this 9th day of December 2016.

Radido Stephen

Judge

Appearances

KUDHEIHA Mr. Siembo, Industrial Relations Officer

For Respondent Federation of Kenya Employers

Court Assistants Nixon/Daisy