



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 635 OF 2014**

**ROSABEL WAGICUGU NYAMU**

**CLAIMANT**

v

**KARUTURI LTD (in receivership)**

**1<sup>st</sup> RESPONDENT**

**IAN SMALL-Joint Receiver/Manager**

**2<sup>nd</sup> RESPONDENT**

**KIERAN DAY-Joint Receiver/Manager**

**3<sup>rd</sup> RESPONDENT**

**RULING**

1. Rosabel Wagicugu Nyamu (applicant) was employed by Karuturi Ltd (now in receivership) (1<sup>st</sup> Respondent) in 2005 as a Pack House Manager. She was ultimately confirmed to the position of General Manager through a letter dated 30 January 2013.
2. As part of the contractual terms of employment, the 1<sup>st</sup> Respondent provided the applicant with housing accommodation in 2012.
3. In early 2014, Karuturi Ltd was placed under receivership and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were appointed as Joint receivers/managers. Prior to the receivership, the applicant had not been paid any salary for 4 months.
4. After the appointment, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents caused an evaluation of the 1<sup>st</sup> Respondent's human resource requirements. The applicant's position of General Manager was determined superfluous and therefore was to be abolished.
5. On or around 5 March 2014, the 2<sup>nd</sup> Respondent informed the applicant that her services would no longer be required and that she should vacate the residential facility which had been assigned to her. At the applicant's request, she was allowed to occupy the house till 31 March 2014.
6. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents prepared a separation letter dated 6 April 2014, informing the applicant of the termination of her services and her dues, but the applicant declined to sign it after being called around 19 May 2014 to collect it.
7. Instead, the applicant commenced legal proceedings being Nakuru Cause No. 170 of 2014, *Rosabel Wagicugu Nyamu v Ian Small & Ar*. The Cause was struck out on technicalities on 28 November 2014, hence the present Cause.
8. The applicant filed a motion with the instant Cause in which the prayer, the subject of this ruling is to the effect

4. THAT pending the hearing and determination of this Cause, the Honourable Court be pleased to issue a temporary injunction restraining the Respondents herein either by themselves, their servants and/or agents from evicting and/or denying the applicant access to her residential house, within the company's premises.

9. This motion was taken on 3 February 2015.
10. The applicant's case is that she was given a verbal notice to vacate after she had been unfairly dismissed and after the placement into receivership of Karuturi Ltd. According to the applicant, there were no legal reasons to evict her.
11. She submitted that she was between a rock and a hard place and had nowhere to go to because she had not been paid her dues. She urged the Court to consider equity.
12. The Respondents filed an affidavit sworn by one Joseph Ndungu Njuguna, in response to the applicant's motion.
13. In the affidavit, it was deposed that the applicant's position had been declared redundant and she was informed of this position on 5 March 2014, but due to intervening circumstances a formal letter could not be executed but eventually it was but the applicant declined to collect and sign it.
14. Further, it was deposed that some nine months after the notification, the applicant had refused to vacate the house which had been allocated to her because of her employment.
15. I have in the very recent past dealt with a case almost similar to the one presented herein save that in that case there was a contractual provision for an employee declared redundant to occupy housing accommodation provided by the employer for 3 months, post declaration of redundancy.
16. In that case, *Benard Mukolwe & 122 Ors v Karuturi Ltd (in receivership) & Ors* (2015) eKLR, I held that the provision of housing accommodation and or pay of housing allowance in lieu is confined to where an employment relationship exists or survive. The corollary to this is that where an employer has terminated and or purported to terminate the services of an employee, the obligation to provide housing or pay in lieu ceases unless there is some other contractual provision to the contrary..... the right to housing under section 31 of the Employment Act is not tied to and does not survive termination, whether unfair or wrongful.
17. In my view, whether the termination of the applicant's services was procedurally or substantively unfair, the right to housing accommodation or house allowance became extinguished. She might have suffered a legal wrong, for which the law has provided appropriate remedies but that must await determination on the merits of the main Cause.
18. The applicant has been having occupation or possession of the house she was allocated pursuant to the employment relationship for nearly a year. That relationship was terminated and is no more.
19. I cannot see any contractual or legal right the applicant has in seeking the Court's aid to continue in occupation of the house.
20. Even if I were wrong on the conclusion reached, the applicant has not met the threshold for grant of injunctive relief as set out in the case of *Giella v Cassman Brown & Bros Ltd*. In short, the applicant has not demonstrated a prima facie case or shown she would suffer irreparable harm.
21. Should the applicant, wish she can enter into a mutually agreeable tenancy agreement with the Respondents.
22. The motion is therefore dismissed with no order as to costs.

**Delivered, dated and signed in Court in Nakuru on this 27<sup>th</sup> day of February 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant Mr. Simiyu instructed by Simiyu & Co. Advocates

For Respondent Mr. Wamaasa instructed by Hamilton Harrison & Matthews (incorporating ORARO & Co.) Advocates