



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1441 OF 2014**

**BETH KALONDU MWEMA.....CLAIMANT**

**VERSUS**

**BRAND KENYA BOARD.....RESPONDENT**

Mr. Wambola for Claimant / Applicant

Mr. Ojiambo for Respondent

**RULING**

1. The Applicant is employed by the Respondent as a receptionist by a letter of offer dated 16<sup>th</sup> October 2009. She successfully completed probation and was confirmed to the position by a letter dated 14<sup>th</sup> April 2010.

2. On 26<sup>th</sup> September 2013, the Applicant was examined by Dr. Wafula J. M. subsequent to which the doctor wrote to the CEO of the Respondent through the Human Resource Department.

3. The Doctor had diagnosed the Applicant with hypertension and work related stress which resulted in multiple admissions in 2012.

4. The Doctor advised that the Applicant avoid noisy environment and especially constant / continuous use of the telephone. The Doctor advised sustained removal from that environment to aid in her recovery.

The information aforesaid is attached to a memorandum of claim dated 26<sup>th</sup> August 2014 and filed on 27<sup>th</sup> August 2014.

5. The issue in dispute is “violation of the Claimant’s constitutionally and legally protected right to fair labour practices, to equality and freedom from discrimination at the place of employment, to human dignity, to safe working environment, to compensation for injuries and diseases sustained in the course of employment and to payment of overtime for work done outside normal working hours.

6. It is the Claimant’s pleadings that;

She has been kept in an environment inimical to her health due to excessive noise from telephones contrary to her Doctor's recommendation;

7. She has been continuously verbally abused and discriminated against by one Mr. Philip Koskei, the Respondent's Human Resource and Administrative manager based on the wrong believe that she was employed and favoured by one Mr. David Ithan Wambua, a former director of the Respondent who had since been terminated as a director by the Respondent.

8. That the verbal, abuse and ill treatment from the said Philip Kosgei is persistent and perennial and the conduct is directly responsible for the Applicants' stress at the workplace and the resultant hypertension.

9. That the Respondent, inspite of the interim orders persists to expose the Applicant to un-unfriendly environment with abandon hence the need to confirm the interim orders pending the hearing and determination of main suit.

10. The notice of motion filed simultaneously with the memorandum of claim is supported by the grounds on the face of the application and the supporting affidavit of the Applicant sworn on 26<sup>th</sup> August 2014.

11. In addition to the verbal abuse and harassment, the Applicant alleges that the Respondent has failed and / or neglected to appraise her performance and to give her a job promotion while all other employees including those junior to and employed after and within the same job group as the Claimant either earn higher salaries or have been promoted or both.

## 12. Response

The Respondent filed a Reply to the statement of claim on 10<sup>th</sup> October 2004 denying that;

(i) it allowed the Claimant any stress, physical strain or emotional trauma as alleged;

(ii) there is any connection to the Claimant's ill health and her work environment;

(iii) the Claimant is discriminated against at all;

The Respondent states further;

(iv) that it had employed a customer care assistant to handle the switchboard work which work was properly in the Claimant's docket;

(v) that it attributes the Claimant's problems to her domestic abusive environment;

(vi) that the Claimant has received salary increment from Kshs.25,000/= in 2009 to Kshs.30,388 todate;

(viii) that the Claimant has been appraised twice every year for periods between July – December and January to June every year except July to December for the year 2013 / 2014. When the Claimant failed to present herself for evaluation.

13. Mr. Philip Koskei filed a Replying Affidavit sworn on 9<sup>th</sup> October 2014 in which he denies all the allegations of abuse and discrimination levelled against him by the Claimant

14. Applying the principles enunciated in **Giella Vs. Casman Brown & Co. Ltd.** as follows:

15. That the Applicant must show a *prima facie* case with a probability of success.

16. That an interlocutory injunction will not normally issue unless the Applicant might suffer irreparable

injury which would not adequately be compensated by an award of damages.

17. If the Court is in doubt it will decide the application on the balance of convenience.

18. The Court finds as follows;

The Court is not satisfied that the Applicant might suffer irreparable harm if she is not granted an interim injunction.

19. That the employer employee relationship is best served by a reciprocal, multifarious relationship governed by the contract of employment and not by the fiat of a Court order.

20. That if indeed upon the hearing and determination of this suit, the alleged abuse and discrimination by the Human Resource Manager against the Claimant is established, the Court is in a position to mete out appropriate remedy including payment of damages, issuance of an permanent injunction and in particular craft appropriate orders against the offending officer(s) as demanded by the code of conduct of public officers under the Kenya Constitution 2010.

However, let the Court sound a warning at this early hour, that it will not hesitate to make recommendations to the appropriate authorities in the Government of Kenya, if indeed, the alleged infractions are proven and especially if they are shown to have continued after the filing of this suit.

21. The Claimant is also admonished by the Court at this early stage, that she is bound by the terms and conditions of service and that he / she who seeks a remedy before this Court of equity must come with clean hands.

22. The Court leaves all these issues for determination upon hearing of the case on merits. The interim orders are not confirmed therefore.

**Dated and Delivered at Nairobi this 4<sup>th</sup> day of February, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**