



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

CAUSE NO. 2195 OF 2014

MAUREEN MUHATI OYALO..... CLAIMANT

VERSUS

CHRIST IS THE ANSWER MINISTRIES..... RESPONDENT

Ms Nguruka for Claimant/Applicant

Mr Wanyaga for the Respondent

RULING

1. The Notice of Motion Application dated and filed on 10.12.2014 seeks inter alia an order stopping the Respondent from declaring the Claimant redundant and that the Claimant be reinstated to her employment position pending the hearing and determination of this suit.
2. The Application is based on grounds set out in paragraphs 1 – 7 on the face of the Notice of Motion and in the Supporting Affidavit of the claimant sworn on 10th December, 2014.
4. The nub of the Application is that the Claimant worked as Senior Secretary/Church Administrator for a period of 3 years between year 2010 until 30th July, 2013.
5. The Applicant performed her job well and received excellent reviews leading to the renewal of her contract for a further period of three years effective from 1st May, 2013. The contract is due to end on 30th April, 2016.
6. In October, 2014 the Respondent conducted workload analysis in which the Claimant was not involved as she was in maternity leave.
7. On 14th November, 2014, the Respondent issued a notice to all staff members to attend interviews on 17th to 19th November, 2014.
8. The Applicant attended the interview on 18th November, 2014 in which she was asked questions with regard to her duties, qualification, mission and vision of the Respondent and believes she performed well.
9. On 8th December, 2014, the Applicant received a letter notifying her that her employment had been terminated on grounds of redundancy and that her last working day would be 15th December, 2014.

10. The Applicant states that the notice issued on 8th December, 2014 was short and was contrary to the law as it was for 7 days only as opposed to 30 days.
11. The letter does not disclose the criteria or reasons for the termination. The criteria used was not objective and was merely used to target her unfairly.
12. That upon declaring the Claimant redundant the Respondent recruited two more people in the same department on 1st November, 2014.
13. That the principle of last in first out was not followed as employees who had not even completed the probationary period had been retained.
14. The Claimant had previously complained of unfair treatment which included the change of designation to a lower capacity and transfer to Kisumu which would have separated her from her family contrary to the Respondent's policy.
15. The Claimant believes she was targeted for termination due to her outspokenness and exposure of corrupt dealing and irregular practices within the Respondent organization.
16. The Applicant concludes that the process of declaring her redundant was discriminatory, unfair and unreasonable and did not pay due regard to seniority in time.
17. The Claimant/Applicant obtained interim orders before the termination had crystallized. She is still in employment and earning a salary though the Respondent has not been allocating her duties.

18. Issues for Determination

- (i) Whether the Claimant/Applicant has made out a *prima facie* case with a probability of success to warrant grant of interim orders.
 - (ii) Whether the Claimant/Applicant has demonstrated that she will suffer damage incapable of being remedied by way of damages.
 - (iii) Balance of convenience
19. This Court has jurisdiction to grant interim preservation orders including injunctions in case of urgency as provided under section 12 (3) (i) of the Employment and Labour Relations Act.
 20. The Court also has powers to make an order for reinstatement under subsection 12(3) (viii).

Prima facie Case

21. The remedy of reinstatement is not one the court ordinarily grants before the full hearing and determination of a suit. It is important to note that the Claimant/Applicant approached court before the termination by way of redundancy had been actualized. The Applicant was granted 7 days' notice to expire on 15th December, 2014 and the Court stopped the process on 10th December, 2014.
22. The interim order sought if granted does not have the effect of reinstating the Claimant/Applicant to her job, but as a matter of fact, its effect would be to stop the process of termination.
23. In the matter of Thomas De la Rue (K) Ltd Vs David Opondo Omutelewa (2013) eKLR, the Court of Appeal held that Redundancy is a unique form of termination of employment and the requirements of Section 40 of the Employment Act were mandatory prequisites.
24. In this case the Respondent did not grant the Claimant/Applicant a notice in terms of section 40(1)

(a) and (b) which notice should be issued not less than a month prior to the date of the intended date of termination on account of redundancy. The notice should be copied to the area labour officer and should state the extent of the intended redundancy.

25. The issuance of the notice is meant to kick start the consultation process in order to fulfil the provisions of section 40 (c) of the Employment Act, in selecting the employees to be declared redundant having due regard to seniority in time, the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy.

26. In this respect, the Claimant/Applicant has established a *prima facie* case with a probability of success. As was observed by the Court of Appeal in the case of Aviation Union Vs Kenya Airways Ltd 2014 eKLR, it is very difficult to obtain a job in Kenya today and therefore where appropriate, the most effective remedy is one which assists the employee affected to retain their job.

27. The Claimant/Applicant has not been accused of any misconduct and the Respondent is a Christian organization. The Court is in doubt whether or not the Claimant/Applicant will suffer irreparable harm if the injunction is not granted. However, the Court is of the considered view that the balance of convenience is in favour of the Claimant retaining her job, until the suit is heard and determined.

28. The Court in arriving at this decision has noted that the Claimant/Applicant is employed on a fixed term contract of three years and this order therefore does not impose any undue difficulty on either party.

29. The Application for injunction has merit and the same is granted with the effect of restraining the Respondent from terminating the employment of the Claimant/Applicant on the basis of retrenchment pending the hearing and determination of the suit.

30. Costs in the cause.

Dated and Delivered at Nairobi this 10th Day of June, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE