



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 564 OF 2015

SELLA MATARIMO 1ST CLAIMANT
BRIAN OTIENO 2ND CLAIMANT
JAMES MWATHA 3RD CLAIMANT
FAITH GACERI STEPHEN 4TH CLAIMANT
TEDDY CHWANYA 5TH CLAIMANT
ALLAN WAKA 6TH CLAIMANT
MARTIN MWANGI MBICHI 7TH CLAIMANT
JENNIFER WAMBUI MWANGI 8TH CLAIMANT
OSBORN MUSANGI 9TH CLAIMANT
CHARLES MBUGUA 10TH CLAIMANT
BERNARD KENA 11TH CLAIMANT
STELLAH WAMBUA 12TH CLAIMANT
CHARLES WAMBUGU 13TH CLAIMANT
STEPHEN LAMBA 14TH CLAIMANT
SAMUEL KAMWANA 15TH CLAIMANT
MICHAEL WAKIBIA 16TH CLAIMANT
ROBER ASHUMA 17TH CLAIMANT

VERSUS

BAKHRESA FOOD PRODUCTS (K) LIMITED RESPONDENT

Mr. Kuona for Claimants / Applicants

Mr. Balala for the Respondent

RULING

1. The Claimants / Applicants brought a Notice of Motion Application dated 9th April 2015, seeking orders that; pending the settlement of the Claimant's dues and or hearing and determination of this suit, a temporary injunction do issue restraining the Respondent, its servants, agents, officers or anyone acting on its behalf from liquidating and or disposing off the motor vehicles listed in Appendix 5 and any assets or in any manner concealing their whereabouts.

That in view of the special circumstances of the dispute, the Claimants' case be fast tracked and heard and determined on a priority basis.

2. The Application is supported by grounds set out on the face of the Notice of Motion and in the Supporting Affidavit of Sellah Matarimo, sworn on behalf of the seventeen (17) Claimants on 9th April 2015 to wit;
3. That the Claimants were employed on a one year contract(s) which ran on diverse dates between January and February 2015 to January and February 2016.
4. That the Respondent issued the Claimants with termination letters on the grounds that the business of the Respondent was closing in Nairobi.
5. That the Respondent was in the process of liquidating and or disposing off its assets with the Claimants' dues yet to be settled in terms of Section 40 of the Employment Act, 2007.
6. The termination letters dated 31st March 2015 written to the Claimants are attached to the Application which confirm the deposition by the Claimants / Applicants
7. The Claimants / Applicants filed a Memorandum of Claim dated 9th April 2015 on the same date in which they claim;
 - a. twelve (12) months' salary being compensation for wrongful dismissal;
 - b. payment of one month's salary in lieu of notice;
 - c. payment in lieu of untaken leave days; and
 - d. costs of the suit.
8. The Respondent filed a Replying Affidavit sworn by Awadh Karama, the Administration Officer of the Respondent in which a bare denial of the allegations made by the Claimants / Applicants is made.
9. The Respondent also filed a statement of defence to the Statement of Claim dated 28th April 2015 on the same date in which, under paragraph 10, the Respondent admits that the employment of the Claimants was terminated on the 31st March 2015.
10. The Respondent does not give the reason for the termination in the Statement of Defence and does not contest, the contents of the Notices of termination of the employment of the Claimants in which the Respondent states;

“due to unavoidable circumstances the company intends to shut its operations in our Nairobi Branch premises.”

11. The Respondent did not make any offer of payment of terminal dues to the Claimants.

Determination

12. In the case of **Churchill Ongalo V. Kenya Kazi Security Services Limited**, I stated thus;
13. It is well settled in **Giella Vs. Cassman Brown & Company Limited [1973] E.A. 358** at 360 that

an applicant who seeks interim relief has to show;

- i. a *prima facie* case with a probability of success;
- ii. irreparable harm would be suffered by the Applicant if the relief sought is not granted
- iii. the balance of convenience favours the grant of the interim relief.

14. In the present case, the Applicants / Claimants have made a *prima facie* case that they were retrenched from employment vide notices dated 31st March 2015, because Respondent (Employer) was closing operations in Nairobi.

15. This is *prima facie* evidence that the Claimants having been retrenched were entitled to payment of terminal benefits under Section 40 of the Employment Act, which as I stated in the Churchill Ongalo's case (*supra*) includes;

- i. one month salary in lieu of notice;
- ii. fifteen (15) days salary for the year worked.

16. The Claimants / Applicants have made a *prima facie* case that the above terminal benefits were not paid out. The Claimants / Applicants have also established a *prima facie* case that the Respondent did not adhere to the provisions of Section 40 of the Employment Act, 2014 and other relevant provisions of the Act, in implementing the retrenchment.

17. The Claimants have high chances of being granted the compensation they seek in the Statement of Claim.

18. The Respondent was on the verge of closing its operations in Nairobi and has not paid the Claimants terminal dues.

19. The Claimants / Applicants have therefore demonstrated that they are likely to suffer irreparable harm if the interim relief sought is not granted.

20. The balance of convenience is also in favour of granting the interim relief sought.

21. The Court therefore orders that, pending the hearing and determination of this suit, the Respondent is restrained from liquidating and or disposing off the motor vehicles listed in Appendix 5 to the suit to wit;

- a. KCA 146 J Lorry – Mitsubishi Fuso
- b. KBZ 972 Z Lorry – Mitsubishi Fuso
- c. KBZ 971 Z – Canter – Mitsubishi Fuso
- d. KBZ 974 Z – Canter – Mitsubishi
- e. KCA 874 G – Canter – Mitsubishi
- f. KCA 875 G – Canter Mitsubishi
- g. KCA 605 G – Probox – (Toyota)
- h. KCA O25 B – Probox – (Toyota)
- i. KCA 984 K – Probox – (Toyota)
- j. KBZ 742 H – Toyota Prado

22. In the alternative the Respondent to deposit in Court security for the Claim and costs in the sum of Kshs.7,164,000.00 within fourteen (14) days from the date of this ruling failing which the interim injunction against sale of the aforesaid motor vehicles will remain in place.

23. Costs in the cause.

Dated and Delivered at Nairobi this 25th day of September 2015

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE