



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 278 OF 2015

KENYA HOTELS AND ALLIED WORKERS UNION

CLAIMANT

v

PLATINUM OUTSOURCING LOGISTICS (EA) LTD

1st RESPONDENT

ENASHIPAI RESORT AND SPA

. 2nd RESPONDENT

RULING

1. In an application filed in Court on 25 September 2015, the Kenya Hotels & Allied Workers Union (Union) sought orders restraining the Respondents from declaring some 41 employees it claimed were its members redundant and also injuncting the Respondents from victimising and or intimidating of its members.
2. The application was heard at the *ex parte* stage by Nduma Principal Judge and he granted an order restraining the Respondents from declaring the 41 employees redundant.
3. The motion was served upon the Respondents and in an unusual move, instead of filing grounds of opposition/replying affidavit objecting to the orders sought, they instead filed a counter application seeking the *ex parte* orders to be issued stayed or set aside.
4. When the 2 applications were placed before me on 19 October 2015, I directed that the counter application be deemed as grounds of opposition to the initial motion.
5. After protracted submissions, the motion was taken on 21 November 2015.
6. I have carefully considered the motion, supporting affidavits and documents placed before me by both parties and I have come to the conclusion that the motion does not need an extensive narration of the facts or parties positions to be determined.
7. The Respondents annexed to their papers the contracts of employment entered into with some of the 41 employees. The Union did not dispute that the terms and tenure of the contracts were the same for all the 41 employees.
8. Clause 1 of the contracts provided

Term of Contract

This employment contract is valid for a period of one year from 1st October 2014. This contract is dependent on the client continuing to work with Platinum Outsourcing & Logistics (EA) Limited.

9. According to the Union, the Respondents informed the 41 employees (who had allegedly joined it) on 16 September 2015 that come 1 October 2015 their services would no longer be required.

10. It is clear from the quoted provision of the contracts that the Respondents had offered the 41 employees fixed term contracts of one year. The current statutory framework envisages and recognises such type of contracts.
11. Because the contracts were for 1 year effective 1 October 2014, the tenure came to an end on the eve of 1 October 2015.
12. Considering the tenure of the contracts, the Court is not convinced at this early stage that the situation presented to it was or is one of redundancy.
13. Therefore, in the view of the Court it would be unmerited for the Court to grant the orders as sought in the motion filed in Court on 25 September 2015.
14. The Court must however note that it appears that there was more than meets the eye in the conduct of the Respondents but that must wait investigations after facts have been placed before Court during the hearing of the Cause on the merits.
15. The motion is therefore dismissed.
16. Costs in the cause.
17. As a postscript, it appears that the Union has mixed causes of action which ought not to be presented together as in the Memorandum of Claim the gravamen of the pleadings is failure to deduct and remit to it union subscriptions and the failure to grant it recognition, while the motion was on purported redundancy.

Delivered, dated and signed in Nakuru on this 11th day of December 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Simiyu (Asst. Secretary General, Kenya Hotels & Allied Workers Union)

For Respondents Ms. Mogire instructed by Nyamu & Nyamu Co. Advocates

Court Assistant Nixon