



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

**CAUSE NO. 1384 OF 2013**

*(Before D.K.N. Marete)*

ANNE WAMBUI NDIRANGU.....CLAIMANT

**Versus**

**SOCIETE GENERALE DE SURVEILLANCE**

**(SGS) (KENYA) LIMITED.....RESPONDENT**

**RULING**

This is an application dated 28th August, 2013 and brought to court under a certificate of urgency of the same date. It seeks the following orders of court;

1. **THAT** this matter be certified as urgent and application be heard ex-parte and service herein be dispensed with in the first instance.
2. **THAT** pending the hearing and determination of this application this Honourable Court do issue a temporary injunction restraining the Respondent, its agents or anybody claiming under it from convening a disciplinary committee against the Claimant on 30<sup>th</sup> August 2013 or any other date thereafter for the purposes of illegally and unlawfully terminating him.
3. **THAT** pending the hearing and determination of this suit this Honourable Court do order the Respondent to reinstate the Applicant to his employment.
4. **THAT** pending the hearing and determination of this suit this Honourable Court do order the Respondent to pay the Applicant his full salary and arrears thereto that he is entitled.
5. **THAT** the costs of this application be provided for.
6. Any further or other orders that this Honourable court may deem fit.

It is further supported by the supporting affidavit of Ann Wambui Ndirangu sworn on the same date.

The claimant/applicant's case is that she was employed by the respondent as an Assistant Weigh Bridge Manager on 1st January, 2011. That this contract of employment was extended and was due to expire on 31st December, 2013. On 13th June, 2013, the respondent's Weigh Bridge Manager issued the applicant with a show cause letter requiring that she shows cause as to why the management should not take action

against her for facilitating transgression of MV. Reg. No. KBU 832K. She was given an ultimatum to respond within a day.

A response was done but on 18th June, 2013, the officer issued a termination letter of the same date. No hearing was even afforded before such termination. That later, she heard of intimations to resolve the issue from her colleagues by affording the affected parties a fair hearing through a disciplinary hearing but this was not to be. That she learnt that this was intended to validate the unlawful termination.

The respondent in an affidavit in reply opposes the claimant/applicant's application in that the claimant's employment is now terminated and her terminal dues paid. It is only an appeal that suffices in the circumstances. The allegation of the appeal coming in to regularize the unlawful termination does not hold water. Moreover, the claimant was heard before termination. The request/demand for reinstatement is not in good faith but intended to evade the appeal. She has, in any event been paid all her terminal dues.

In her written submissions, the claimant/applicant reiterates her case. She posits that the procedure of her termination of employment by the Weighbridge Manager was wrongful. That disciplinary process as scheduled should not have preceded dismissal. She therefore deems this dismissal flawed and calls for reinstatement.

The respondent in his submissions argues that due process was followed in terminating the claimant's employment. She was served with a notice to show cause and her response found irregular, unsatisfactory and therefore the dismissal. The termination was therefore procedural and the claimant should not be heard to complain. The application should therefore not be upheld, or at all.

The matter at this stage is contested. It is not clear from the applicant whether she has a *prima facie* case with a probability of success as espoused in the authority of **Giella vs Cassman Brown, [1973] E.A. 358** and the principles thereof. It is therefore not safe to uphold a case for an injunction where the Giella principles are not demonstrated or evident on the face.

I am therefore inclined to dismiss this application with no orders as to costs.

Delivered, dated and signed the 24th day of April, 2014.

**D.K. Njagi Marete**

**JUDGE**

Appearances:

1. Mr. Ochako instructed by J. Okerosi Ochako & Company Advocates for the applicant.
2. Mr. Obura instructed by Obura J. & Company Advocates for the respondent.