



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1363 OF 2013

(Before D.K.N. Marete)

MORRIS BURI MARUBE.....CLAIMANT

Versus

SOCIETE GENERALE DE SURVEILLANCE

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

RULING

This is an application dated 23rd August, 2013 and brought to court under a certificate of urgency of the same date. The application was preceded but filed together with a chamber summons of the same date seeking leave for the application to be heard during the court vacation. It seeks the following orders;

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 30th 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 Morris Buri Marube sworn on the same date.

The respondent opposes this application and avers that the applicant's position is untenable and therefore should not carry the day.

The matter came for hearing severally until the 2nd December, 2013 when they agreed on a disposal of

the same by way of written submissions.

The claimant/applicant originates this application on the basis that on 21st December, 2012 he was employed by the respondent as an Assistant Weigh Bridge Manager. He accepted the terms and was posted to Gilgil Weigh Bridge. On 13th June, 2013, he received a show cause letter to which he replied and explained the matter. On 18th June, 2013, the Weigh Bridge Manager dismissed the claimant.

The claimant thereon did a demand letter to which he was answered that the termination was lawful. He got in touch with the Human Resource Manager who set a disciplinary hearing for the claimant and his team also thus dismissed. They accepted this only to learn later that this hearing was intended to validate the illegal dismissal.

The respondent's testimony is that the claimant's services were terminated lawfully. Vide an e-mail dated 11th July, 2013, the claimant canvassed for an appeal to which he was granted. It was fixed for 30th June, 2013. This was even intended to be a disciplinary hearing. She denies the feelings of the claimant on the subject and denies that there was any other agreement on the issue of dismissal or termination.

The respondent's submissions reiterate her case on the subject. She denies unlawful termination of employment and submits that procedural requirements were had in the dismissal. I agree.

The evidence available from the pleadings and submissions of the parties bring out a case for the respondent. The claimant has not, on the face of it, demonstrated a substantive case on a balance of probabilities to warrant the issue of an injunction against the respondent. There is nothing outstanding to bring out the case in his favour. He was heard, dismissed and awarded an opportunity for appeal. This has not been taken up as yet.

The circumstances of the case and evidence adduced by the claimant/applicant does not establish a *prima facie* case with a possibility of success as is required in the reknown authority of **Giella vs Cassman Brown, [1973] E.A. 358** principles. It must therefore fail.

I am in the circumstances inclined to dismiss this application with costs to the respondent.

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.