



## **IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

(Before Hon. Justice Hellen Wasilwa on 17<sup>th</sup> June, 2014)

**-VERSUS-**

### **RULING**

They sought orders to restrain the respondent from executing the intended termination on account of redundancy of the employees working at the respondent's security department and to maintain the *status quo* until this matter is heard and determined.

The application is supported on the grounds that:-

1. **The respondent purported that the decision to terminate the said employees on account of redundancy was a resolution by the board of governors during their meeting of 1st November 2013.**
2. **The said employees have been diligently and competently working for many years as security for the respondent and have been awarded certificates of excellence for their exemplary work.**
3. **To date the respondent is yet to communicate on cancellation of termination of the grievant as their effective date is fast approaching and it is the contention of the claimant that the respondent is only keen on unlawfully terminating the services of the grievant to defeat the claimant as the grievants are only targeted due to their involvement with matters of the union.**
4. **This pending disputes are the unfair termination of;**
  2. **Kennedy Opecho – a cook was terminated in October 2011.**
  4. **Jackson Oganga – a security guard was terminated in October 2011.**
  6. **Tom Oloo - a security guard was terminated in December 2012.**
  8. **Edwin Omondi Oloo – a librarian terminated in December 2012.**

**And now the entire security to be terminated by 1st April 2014. On all the termination the respondent is unable to substantiate the reason for termination.**

10. **As the respondent is by far and large not sincere on the reasons for the supposed intended termination on account of redundancy which is merely a plot to deny employees their Constitutional right of being part of the claimant and further being represented in matters of employment.**
12. **It is therefore the contention of the claimant that these actions of the respondent is a serious contravention of Article 41 of the Constitution of Kenya 2010, Clause 5, 40, 43, 45 and S. 46 of Employment Act 2007 and therefore unfair and a labour malpractice of the highest degree.**

It is the applicants submission that the respondent in attempting to declare their members redundant, never complied with the requirements of S. 40 of Employment Act 2007. That the respondent further started to terminate services of claimant members and to-date 9 members have been terminated and only 1 paid terminal benefits. In applicants view, the respondent's action is meant to defeat provisions of Article 41 of Constitution on a right to join a Union and therefore close out the claimants from recognition by reducing their numbers.

Having considered submissions of both parties, the issue for consideration is whether in the attempt to declare the claimant union's members, redundant, the respondent adhered to the law.

**“(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—**

**(b) Where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;**

**(d) Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable**

**(e) The employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;**

**(g) The employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.**

From my analysis, I find that the application by the applicant has merit and I therefore order that:-

**(b) The respondents are also restrained from victimizing intimidating, harassing or otherwise declaring the claimant members redundant until this case is heard and determined.**

**HELLEN WASILWA**

**17/6/2014**

Tonge Yoya for claimants present

CC. Wamache