



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1688 OF 2013

KENYA COUNCIL OF EMPLOYMENT

AND MIGRATION AGENCIES CLAIMANT

VERSUS

THE C.E.O/MANAGEMENT NAIROBI

WEST HOSPITAL 1ST RESPONDENT

DIRECTOR OF IMMIGRATIONS

SERVICES 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

Mr. Evans Akuma – Applicant

Mr. Makori for 1st Respondent

Mr. Munene for 2nd and 3rd Respondent

RULING

1. Notice of preliminary objection dated 30th October 2013 was filed by the 1st Respondent.
2. The 2nd and 3rd Respondents are in support of the objection.
3. The nub of the objection is as follows;
 - i. there is no proper claim for adjudication before the Court upon which the application dated 22nd October 2013 is grounded.
 - ii. the Claimant has no *Locus Standi* to bring this claim; and
 - iii. the Application has no basis in law and the same is frivolous, vexatious and an abuse of the process of the Court.
4. The application dated 22nd October 2010 is by one **Evans Nyambega Akuma**, the

Chairman of Kenya Council of Employment and Migration Agencies which is a registered Society in Governance, Employment and Migration matters.

The Application is supported by an Affidavit of the said Evans Nyambega Akuma.

5. No authority by the officials of the society Mr. Evans Nyambega Akuma to bring this suit on its behalf is attached to the Application.

6. In fact, the said Mr. Evans Nyambega Akuma does not, in his supporting Affidavit purport to have any such authority to bring this suit on behalf of the Claimant.

7. Annexed to the Application is a memorandum of claim dated 22nd October 2013 and filed simultaneously with the interlocutory application.

8. An injunction is sought to

- i. restrain the 1st and 2nd Respondents from issuing work permits to one Singh Saroj Kumar passport No. H8741774 of Indian Nationality and Prakash Krishnan Murti Passport No. G7790353; and
- ii. restrain the 1st Respondent from advertising and conducting interviews of foreigners for jobs, which locals are highly qualified to take; and
- iii. the 1st and 2nd Respondent be penalized for colluding in such circumstances to defeat government efforts in creation of jobs.

9. From the outset, the Court notes that **Section 16(2)** of the **Government Proceedings Act Cap 40** of the **Laws of Kenya** prohibits issuance of injunctions against the Government. Claimant ought to have sought declaratory orders.

Furthermore, Applicant has not, in his supporting Affidavit made averments sufficient to establish a *prima facie* case with a probability of success to warrant the Court to grant the interim injunction sought.

10. The Applicant has also failed to establish that he has authority to bring this suit and the Application on behalf of the Claimant society.

11. In the verifying affidavit sworn by Mr. Evans Nyambega Akuma on 22nd October 2013, he deposes that he is the Claimant. He equates himself with the Kenya Council of Employment Migration Agency which position is not tenable in fact or law.

He does not in the said verifying affidavit disclose his connection to the Claimant society.

12. To this extent there is no proper claim for adjudication before the Court upon which the application dated 22nd October 2013 is grounded.

Furthermore, there are no material disclosures to establish the *Locus standi* of the Claimant herein in the matter nor has authority been established by one Evans Nyambega Akuma to bring this suit on behalf of the Claimant.

Accordingly, the 1st and 2nd preliminary objections are upheld with the result that the entire suit is dismissed with costs to the Respondents.

Dated and Delivered at Nairobi this 18th day of July, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE