



**REPUBLIC OF KENYA**

**INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1927 OF 2013**

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

**MICHAEL NJAI .....CLAIMANT**

Versus

**AMADEUS EAST AFRICA .....RESPONDENT**

**DIRECTIONS**

This matter originated through an application by way of Notice of Motion dated 2nd December, 2012. It was brought to court by way of a certificate of urgency of the same date.

When the matter came to court, the following orders of court were made;

- i. *That the application is certified as urgent and serviced of the application be dispensed with in the first instance.*
- ii. *That the Respondent be and is hereby restrained from taking any further action whatsoever in furtherance of its process of constructive unlawful termination of the claimant’s employment pending the hearing inter partes of this application.*
- iii. *That the Claimant/Applicant be and is hereby ordered to service the hearing date/notice and orders of this court to the Respondent forthwith but not later than the close of the day on 3<sup>rd</sup> December, 2013.*
- iv. *That hearing of this application inter partes be on 9<sup>th</sup> December, 2013 at 900 hours.*

The matter came for *inter partes* hearing on 9th December, 2014 when the claimant prayed for time to file a further affidavit and the court granted the same with a hearing date for the application set for 19th January, 2014.

On 19th January, 2014, the trial court was not sitting and the matter was listed before Rika, J. who granted orders for setting aside the orders granted to the claimant and also stood over the matter generally. At a further hearing on 23rd February, 2013, the orders of Rika, J. above were vacated by Onyango, J. who set the application of 2nd December 2013 for hearing before this court on 17th January, 2014. In both instances, parties were heard *ex parte*.

On 7th January, 2014, the matter again appeared before Rika, J. for the hearing of an application dated 6th January, 2014 by the respondent with orders *inter alia* that the application also be heard before the

trial court on 17th January, 2014.

On 14th January, 2014, the claimants brought to court an application dated 13th January, 2014 and at the hearing sought leave to initiate contempt proceedings against the respondent where Ndolo, J. granted orders as prayed.

When the matter came before this court on 17th January, 2014, counsel for the parties sought the court's direction on the order for proceedings and also clarification in view of the various pending applications and orders of court.

Mrs. Watende, counsel for the respondent submitted that as we speak, there is an application for committal to civil jail of the respondent's Managing Director and herself as counsel that was set for hearing on 25th January, 2014 arising out of the respondent's terminating the employment of the claimant. She therefore prayed for leave to make a reply to the application. She also submitted that (see draft) on that day; the claimant's applications were dated 6th January, 2014 and that the court should direct on the priority of hearing the same.

Dr. Kuria, counsel for the claimant opposed any intimations at seeking an adjournment. He opined and submitted that the respondent and the counsel should not be heard as they were in contempt of court for disobedience of the orders of court of 2nd December, 2013 and 23rd December, 2013 and interpreted counsel's earlier address to court as a derailment of proceedings, order and duties of court. Counsel further submitted that this court does not take note of allegations of the termination of the claimant in that this matter is *res judicata* and for determination at the contempt proceedings. He also faulted the application dated 6th January, 2014 as being misplaced and out of tune.

On 17th January, 2014, two applications were set for hearing; the application by the claimant/Applicant dated 2nd December, 2013 and one by the respondent's dated 6th January, 2014. These, together with the claimant's applications for contempt dated 14th January, 2014 pending hearing and determination. I therefore direct and order proceedings in this cause as follows;

1. THAT the application for committal to civil jail dated 14th January, 2014 be heard in priority on a date to be agreed on by the parties.
2. THAT the respondents be and are hereby awarded seven days to file a reply to the application dated 14th January, 2014.
3. THAT all other pending applications in this cause take cue and come for hearing after the hearing of this application.
4. THAT all parties be and are awarded corresponding leave to reply and or respond to pleadings on service.

Delivered, dated and signed the 9th day of July, 2014.

**D.K. Njagi Marete**

**JUDGE**

Appearances:

1. Dr. Kuria instructed by Kamau Kuria & Company Advocates for the Claimant/Applicant.
2. Mrs. Watende instructed by Kaplan & Straton for the Respondents.