



REPUBLIC OF KENYA  
IN THE INDUSTRIAL COURT AT NAIROBI  
CAUSE NUMBER 1266 OF 2014

**BETWEEN**

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL  
INSTITUTIONS AND HOSPITAL WORKERS ..... CLAIMANT

**VERSUS**

SOCIAL SERVICE LEAGUE  
M.P. SHAH HOSPITAL..... RESPONDENT

RULING

The Claimant Union filed a Statement of Claim on 31<sup>st</sup> July 2014. The Claim is brought on behalf of the Claimant's Member Christine Wairimu Kyanui. She was employed by the Respondent on 6<sup>th</sup> December 2012, as a Plaster Technician.

On 26<sup>th</sup> June 2014, the Respondent notified the Claimant that its Member (Grievant) would have to leave employment effective 31<sup>st</sup> July 2014. Her position of Plaster Technician had been rendered redundant.

The Claimant disputes the validity and procedure of the redundancy. The Claimant seeks the following Orders:-

- (a) The Respondent be permanently restrained from executing its intended redundancy.
- (b) If redundancy has become effective by the time of determining the Claim, the Respondent to reinstate the Grievant.
- (c) In the alternative, the Respondent be ordered to pay the Grievant 12 months' salary in compensation for unfair termination, 1 month salary in notice pay, severance pay, salary arrears, 20 days of accrued annual leave and traveling allowance.

The Statement of Claim was filed together with a Notice of Motion, seeking among other Orders, that the Respondent is "*restrained from declaring the Claimant's Member redundant, harassing, intimidating or otherwise victimizing, until this application is heard and determined.*"

This application was heard during the Court Vacation on 20<sup>th</sup> August 2014, with Mr. Tonge Yoya, Industrial Relations Officer, appearing for the Claimant, and Learned Senior Counsel Mr. Steve Mwenesi, for the Respondent. The application is the subject matter of today's ruling.

The application is supported by the affidavit of the Acting General Secretary of the Claimant Union, Colonel Oundah, sworn on 31<sup>st</sup> July 2014, and a Response to the Respondent's Replying Affidavit, filed on 19<sup>th</sup> August 2014. The Respondent filed, and relies on the Replying Affidavit of its Human Resource Manager Falguni Chudasama, sworn on 11<sup>th</sup> August 2014.

It is the common position of the Parties that the termination notice took effect on 31<sup>st</sup> July 2014, when these proceedings were initiated. No order barring termination, or granting interim reinstatement, has issued.

The Grievant ceased to work from 31<sup>st</sup> July 2014.

Her application, as conceded by Mr. Yoya, is therefore reduced to one for interim reinstatement.

This Court's position has been that reinstatement, is ordinarily given as a substantive remedy, not a provisional relief. This position has been restated in ***Industrial Court of Kenya Cause No.592 of 2013 between Nilan Nyota Mirembo v. Nairobi City Council; Cause No. 620 of 2013 between Alfred Nyungu Kimungui v. the Bomas of Kenya Limited; and Cause No. 1200 of 2012 between Professor Gitile Naituli v. University Council Multimedia College and Another.***

What the claimant is asking the Court to do, is rule on the validity and fairness of procedure, in the termination of the Grievant's contract of employment through redundancy, on an interlocutory application. What would be left of the main dispute if the Court gave a ruling in the interim, determining if the Respondent acted in accordance with Sections 40, 41, 43 and 45 of the Employment Act 2007?

Termination of employment, as stated in the above decisions, is a prerogative of the Employer, which the Court should not unduly interfere with, particularly through reliefs such as interim reinstatement, and injunctive orders against the administration of workplace disciplinary process.

The Claimant has asked for reinstatement without loss of salaries, benefits, privilege and seniority in the substantive claim. It has in the alternative sought compensation and full terminal benefits for the Grievant. It also seeks the order to permanently restrain the Respondent from executing redundancy. No prejudice would be suffered by the Grievant, by not having an order for interim reinstatement.

There is no justification for an order of interim reinstatement. The Claimant ought to schedule the main dispute for hearing, on an accelerated basis. That is how the law intends disputes of this nature should be heard – in full and on accelerated basis, not through interlocutory applications. Rule 16(7) of the Industrial Court (Procedure) Rules 2010 states that, where the subject matter of a suit can be disposed by hearing and determining the suit without prejudicing the applicant, the Court may discourage interlocutory proceedings. This should apply to cases where termination has already taken effect and reinstatement is sought. It is after all the Employer who is required to prove validity and the procedural fairness of termination. Compelling Employers to do so on interlocutory applications, bare affidavits, and pleadings, would not meet the threshold of a fair hearing.

*IT IS ORDERED:-*

- (a) The Claimant's Application filed on 31<sup>st</sup> July 2014 is rejected.*
- (b) The Claimant shall endeavor to have the main dispute scheduled for full hearing on an accelerated basis.*
- (c) Costs in the Cause.*

Dated and delivered at Nairobi this 17<sup>th</sup> day of September 2014

James Rika

Judge