



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 47 OF 2014

- 1. PAUL IRUNGU MWANGI**
- 2. PAULINE VOLIA KITHEKA**
- 3. FR. PHILIP MUGADIZI**
- 4. JANE MUDERE ICHANGWA**
- 5. COSMAS AMBETSA MUGATIA**
- 6. YUVINALIS RATEMO**
- 7. JOHN NDUNGU KERIKO**
- 8. DOUGLAS KIBET KOECH**
- 9. BETTY JEMATIA KIMOSOP**
- 10. KEVIN MOSES KOECH**
- 11. JESSICA ANGILA KUYA**
- 12. HESBONE JOSEPH OLWANDA**
- 13. ELIAS MUGATIA LWOBA**
- 14. CATERINE MAGAGA**
- 15. PETER NGANGA MBUGUA**
- 16. EVANS ASENEKA MIDENYO**
- 17. HELLEN OLUMASAI MUKHWANA**
- 18. ANDREAS KAMAU**
- 19. HILTON KIMANI**
- 20. GEORGE NGANGA**

21. ZAKAYO NGUGI
22. SAMUEL OWAGA OGONDI
23. STEPHEN THUMBI
24. MARY GITAU WAMBUI
25. EUNICE CHEGE WANJIRU
26. JOSEPH KIPKOECH YEGO
27. QUEENTERN ANYANGO YOGO
28. MARTIN MASONGOLE
29. WILSON MUNGAI MUKUHA
30. BEATRICE MWANGI
31. DICKSON INYAMBUKU
32. SILA SONGO

33. MOSES MBUGUA..... CLAIMANTS

VERSUS

ORTHODOX ARCHBISHOPRIC OF KENYA & IRINOUPOLIS RESPONDENT

**MILIKI SAVINGS AND CREDIT SOCIETY LIMITED....INTERESTED PARTY /
RESPONDENT**

M/S Githinji for Respondent / Applicant

Mr. Inguta for Claimants and Interested Party

RULING

1. The Respondent / Applicant brought an application dated 12th May 2014 seeking for an order in terms of prayers 1, 2 and 3 of the Notice of Motion.
2. The interim orders sought were granted the effect of which was to injunct CFC Stanbic Bank Kenya Limited and Barclays Bank Kenya Limited from making any payments from the Respondent/Applicant's accounts to the Interested party Miliki Savings and Credit Society Limited on behalf of the thirty two 32 Claimants pending the hearing of this application interparties.
3. On 4th April 2014, the Interested Party had filed a motion under certificate seeking to be joined as an Interested Party to this suit and also sought orders to prevent the Respondent / Applicant by itself or through its Agents from transferring funds or monies on account of the Claimant's salaries and or salary arrears except through the Interested Party pending the hearing and determination of this application interpartes.
4. The Interested Party having been joined in the suit rather than filing a Replying Affidavit to the Application dated 12th May 2014 filed another Application on a certificate of urgency dated 26th May

2014 and on 27th May 2014 seeking for orders;

1. to stay the temporary injunction issued on 16th May 2014 by this Court; and
2. the Court be pleased to review the said orders and issue an order setting them aside.

5. The Application is supported by an Affidavit of Patrick Nalisi Iravo an Advocate of the High Court.

6. Meanwhile the Respondent filed Supplementary Affidavit by one Adreas Makarios Tillyrides the Archbishop of the Respondent Church in support of the Application dated 12th May 2014.

7. The Claimant and the Interested Party filed Grounds of opposition dated 10th June 2014 to the Application dated 12th May 2014 to wit;

1. the issues arising are beyond the scope of this Court's jurisdiction.
2. the Application is misconceived and an abuse of the process of this Court.

8. In addition, the Interested Party and the Claimant filed a Replying Affidavit deponed to by Patrick Nalisi Iravo in response to the Application dated 12th May 2014.

The issues for determination are as follows;

1. whether the Court has jurisdiction to hear and determine the application brought on 12th May 2014 by the Respondent / Applicant (an employer) against the Interested Party (ASACCO for the employees of the Respondent).
2. whether the Applicant has met the preliquisites of granting an interim injunction.

Jurisdiction

9. In terms of **Article 162(2)** of the **Constitution** as read with **Section 12** of the **Industrial Court Act 2012** the Industrial Court has;

*“exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with **Article 162(2)** of the **Constitution** and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and Labour Relations...”*

10. The issue in dispute in the claim pending before the Court is non remittance of monies deducted from the salaries of 76 Claimants by their employer the Respondent herein to;

1. The National Social Security Fund (NSSF);
2. The National Hospital Insurance Fund (N.H.I.F);
3. The Orthodox Development Savings and Credit society Limited (SACCO). The National Industrial Training Authority under the Ministry of Labour;
4. The Kenya Revenue Authority (KRA);
5. payment with respect to union dues deducted from employees who are members of the Kenya Union of Domestic, Hostels, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA).

11. These are matters which relate to Employment and Labour Relations within the meaning of **Section 12(1)** of the **Industrial Court Act, No. 20. 2911**.

12. The Industrial Court has exclusive original and appellate jurisdiction over this dispute. The preliminary objection is therefore not upheld.

Issue 2

13. As to whether the Applicant has met the prerequisite of granting an interim injunction.

In the case of **Giella v. Cassman Brown & Co. Ltd. [1973] E.A. 358** was set the conditions for the grant of an interlocutory injunction as follows;

- a) an applicant must show a *prima facie* case with a probability of success;
- b) an Interlocutory Injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages;
- c) if the Court is in doubt it will decide an application on the balance of convenience.

16. In the light of the aforesaid principles, we now turn to the facts of the present case. Having regard to the grounds set out in the Notice of Motion and the Supporting affidavit, grounds of opposition and Replying Affidavit of the Interested Party and the written submissions of the learned counsel representing the parties, we find that the Respondent / Applicant does not own up to a failure that at this point is *prima facie* established to remit monies held by the Respondent in trust of the thirty three (33) Claimants to the Interested Party.

17. An interim injunction is an equitable relief and he who comes to equity must come with clean hands.

18. In this regard, though the Court must refrain from making any determination on the merits of the main claim or any defence of it, the Court is constrained to look at the bonafides of the Applicant and the general duty of an applicant to disclose material facts at the *ex parte* stage of the application.

19. It is apparent that the Respondent's hands are tainted by the illegality of failure to remit statutory dues of its employees and other monies lawfully deducted from the employees but has not been timeously remitted to entities the employees have lawfully instructed the Respondent to remit the money deducted to.

20. For this reason alone, the Respondent / Applicant has failed to make out a *prima facie* case with probability of success.

21. Furthermore, the Respondent is unlikely to suffer irreparable harm, if it remits the money held by it in trust on behalf of its employees, the only dispute being the quantum of the money liable for transmission to the Interested Party and other statutory bodies on behalf of the Claimants.

The Application is therefore dismissed with costs in the cause.

The main suit will take its normal course.

Dated and Delivered in Nairobi this 17th day of October, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE