



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 958 OF 2014**

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

**BENEDICT MUINDI MAITHYA & 11 OTHERS .....CLAIMANTS**

**Versus**

**ASHOK UMAKANTI J. DAVE T/A**

**DAVES CATERING.....RESPONDENT**

**RULING**

This is an application by way of Notice of Motion dated 10th June, 2014 and brought to court under a certificate of urgency of the same date. It is premised on the supporting affidavit of Robert Muthenya sworn on the same date. It seeks the following orders;

- i. *The Respondent has dismissed the Claimants with effect from 18<sup>th</sup> April, 2014.*
- ii. *The said dismissal does not address the payment of Claimants terminal benefits.*
- iii. *The Respondent has also not served the claimants with any notice to show cause why their services should not be terminated as mandatorily required by the provisions of Section 41 of the employment Act, 2007.*
- iv. *The claimants/Applicants are apprehensive that the Respondent may run away without paying them their entitlements which may cause them irreparable loss and damage.*
- v. *That unless the Honourable Court urgently intervenes and issues the orders sought the Claimants will suffer irreparably.*

The respondent on the other hand opposes the application and deems the same frivolous, lacking in merit and also brought out in bad faith. The respondent further avers that the applicants' employment was never terminated but they staged a sitin and refused to work. This was without notice. Two of these, the 4th and 6th claimants have since received resumed work after negotiations for forgiveness and pardon. They further posit that the respondent is a going concern and there is no intention of closing down the same. The claim and prayer for a deposit of security as made would be punitive and unwarranted.

The claimant/applicants case is that the 12 employees have been employees of the respondent having been employed on different dates and positions as set out in the claim. The applicants' services were terminated on or about the 18th April, 2014 on grounds that their continued engagement was no longer required. They further contend that the termination did not take into account their terminal dues which issue was raised by their counsel but has not been adequately addressed by the respondents. The respondents, it is feared, are likely to close their business and run away from the jurisdiction of this court

thus evade payment of dues to the applicants. This justified the prayer for orders for a deposit of security on the part of the claimants/applicants.

The applicant has not adduced any evidence in support of the application. They merely allege that the respondent is likely to close down and the directors run out of this court's jurisdiction. There is nothing whatsoever in support of this.

The respondents in their replying affidavit adduce evidence of Kenyan nationality for Umakant J.M. Dave, one of its Directors and also on agreement between the respondent and Nairobi Gymkana on the terms of the respondents catering enterprise. This as averred by the respondent commences on 20th February, 2013 and lasts two years.

The matter in the absence of proof and substantiation by the applicant tilts in favour of the respondents. I am therefore inclined to dismiss the application with costs to the respondents.

Delivered, dated and signed this 7th day of November, 2014.

**D.K. Njagi Marete**

**JUDGE**

Appearances

1. Mr. Nyabena instructed by Nyabena Nyakundi & Company Advocates for the Claimant/Applicant.
2. Mr. Masinde instructed by Boniface Masinde & Company Advocates for the Respondents.