



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 72 of 2011**

**FREDRICK NGARI MUCHIRA AND 99 OTHERS.....CLAIMANT**

**VERSUS**

**PYRETHRUM BOARD OF KENYA.....RESPONDENT**

**RULING**

1. By a Memorandum of Claim dated 29<sup>th</sup> December 2010, the claimants have sued the Respondent for failure to pay the claimants their full terminal/redundancy dues and to account for the dues. Among the itemized claims for each of the 99 claimants is unremitted contributions to Pareto Sacco. The main claim is fixed for hearing on 5<sup>th</sup> December 2012.

2. On 1<sup>st</sup> October 2012, the Respondent through a Notice of Motion filed under certificate of urgency dated 29<sup>th</sup> September 2012 seeks the following orders:-

(i) **THAT** service of this application be dispensed within the first instance.

(ii) **THAT** pending the hearing on this application, this Honourable Court be pleased to grant temporary injunction restraining the claimants either by themselves, their agents and/or servants from in any way demanding for their Pareto Co-operative Savings and Credit Society Ltd Shares [Pareto Shares] or any other claim pending before this Honourable Court, from the Respondent or visiting the Respondent premises regarding any issue pending before this Honourable Court, or disrupting the operations fo the respondent regarding any issue pending beiofre this Honourable Court or in any other manner whatsoever contacting, dealing with the Respondent or interfering with the Respondent's operations regarding any issue pending before this Honourable Court.

(iii) **THAT** pending the hearing and final determination of the claimants' claims herein, this honourable Court be pleased to grant temporary injunction restraining the claimants either by themselves, their agents and/or servants from in any way demanding for their Pareto Sacco Shares or any other claim pending before this Honourable Court, from the Respondent or visiting the Respondent premises regarding any issue pending before this Honourable Court, or disrupting the operations of the Respondent regarding any issue pending before this Honourable Court or in any other manner whatsoever contacting, dealing with the Respondent regarding any issue pending before this Honourable Court.

(iv) **THAT** this Honourable Court be pleased to grant leave to the Respondent to amend its Response

to the Statement of Claim as per the draft Amended response to the Statement of Claim.

(v) **THAT** the Respondent be at liberty to apply for any further orders deemed fit by this Honourable Court.

(6) **THAT** the costs of this application be met by the claimants.

3. The Respondent was heard ex-parte on 1<sup>st</sup> October 2012 when the Court granted the following interim orders:-

(i) **THAT** the application be and is hereby certified urgent and heard ex-parte in the first instance.

(ii) **THAT** pending the hearing of this application a temporary injunction be and is hereby issued restraining the claimants either by themselves, their agents and/or servants from in any way demanding for their Pareto Co-operative Savings and Credit Society Ltd shares [Pareto Sacco Shares] or any other claim pending before this Honourable Court, from the Respondent or disrupting the operation of the Respondent's regarding any issue pending before this Honourable Court or in any other manner whatsoever contacting, dealing with the Respondent or interfering with the Respondent's operations regarding any issue pending before this Honourable Court.

(iii) Interpartes hearing on 9<sup>th</sup> October 2012 at 9.00 a.m.

(iv) The Respondent/Applicant to serve the application forthwith.

(v) The claimant to file and serve its grounds of opposition or replying affidavits on or before 8<sup>th</sup> October, 2012.

4. The application was heard interpartes on 9<sup>th</sup> October, 2012 when Mr. Bundi appeared for the claimant while Mr. Orege represented the Respondent.

5. Mr. Orege relied on the affidavit of **ISAAC JUMA WAMBULWA MULAGOLI** the Managing Director of the Respondent. He deponed that one of the prayers in the Memorandum of Claim is payment of Pareto Sacco shares which is payable by Pareto Sacco Ltd, an independent legal entity. That on 27<sup>th</sup> September 2012 the claimants visited the respondents headquarters within Nakuru Town and menacingly demanded to be paid Pareto Sacco shares by the Respondent, locked up the Respondents premises thereby interfering with the Respondents' normal operations and threatened to continue visiting the premises until the Respondent gives in to their demands, that this is an abuse of Court process and unless an injunction was issued by this Court restraining them the Respondent will suffer irreparable harm.

6. Mr. Bundi for the claimants relied on the replying affidavit of **HOWARD KIPKOECH KORIR**, one of the claimants who deponed that the claimants were at the premises of the Respondent on 27<sup>th</sup> September 2012 where they were going to meet the Minister to address them on their outstanding pensions, that they have various complaints against the Respondent and require to visit the premises for follow-up, that the premises of the Respondent also house the Pension Scheme Manager, that they were peaceful but it is the Respondent who called the police and unleashed his security to cordon off the area, that they have a constitutional right of assembly which will be infringed if the orders are granted.

7. The Court has heard submissions from counsel for the parties, read the Notice of Motion dated 29<sup>th</sup> September, the supporting affidavit of the Respondents Managing Director **ISAAC JUMA WAMBLWA MULANGOLI** and the replying affidavit of **HOWARD KIPKOECH KORIR**. The claimants do not deny having gone to the Respondents premises on 27<sup>th</sup> September. They have justified going to the Respondents premises on the grounds that they were going to meet the Minister and were actually addressed by Assistant Minister Kareke Mbiuki at the Respondents premises when they submitted their grievances against the Respondent in the presence of the Managing Director, and brought to his attention the ruling by the retirement Benefits Authority on the payment of their pensions for his

intervention. The claimants further submit that they are a financially hopeless and a desperate lot, a situation brought about by the applicants insensitivity and that they are inviting all stakeholders, government agencies and the hounourable Court to alleviate their suffering.

8. The circumstances under which injunctions are issued are well settled in Kenya. These are set out in the celebrated case of **GIELLA VS CASSMAN BROWN [1973] E.A. 358**. Under the Industrial Court Act 2011, this Court has jurisdiction to grant temporary reliefs or ancillary reliefs pending the hearing and determination of a case. The Respondent in this case is apprehensive of disruption of its operations by the claimants visiting his premises. Their sheer numbers alone is sufficient to disrupt the respondents operations even when they are peaceful. The claimants do not deny going to the premises. Their explanation is that they were going to the office of the pension's scheme which is in the same premises. This is contrary to the request made to the police which was not copied to the Respondent, but which states that the claimants wished to hold a peaceful procession to the Respondents premises and to be addressed by the respondents Managing Director. The Managing Director was not notified about the procession. The reason that they claimants were going to be addressed by the Minister is also not in the letters to the police nor is the demand of pensions a reason for the procession to the Respondents offices. In the claimants replying affidavit of **HOWARD KIPKOECH KORIR** he has appended the proceedings of the Retirement Benefits Appeals Tribunal which had already decided on the issue of pensions way back in 2011. The procession and the address by the Minister are not the legal modes of execution of the tribunal's decision. In any event the last appendix in the affidavit which is not marked is a letter from the CEO of the Retirement Benefits Authority to the effect that the scheme is insolvent, and asking for its dissolution. There was no way a procession or an address by the Minister would change that fact.

9. Paragraph 27 of the Replying Affidavit correctly describes the claimants as "financially hopeless and a desperate lot". These are not people who can be expected to hold a peaceful demonstration to the premises of an organization they describe as insensitive to their claims. The claimants cannot hide behind their constitutional right of assembly to disrupt the operations of the Respondent.

10. The Respondent has proved on a balance of probabilities that there is sufficient reason to warrant restraining the claimants by themselves, their agents and/or servants from in any way demanding for their Pareto Sacco Shares or any other claim pending before this Honourable Court, from the Respondent or visiting the Respondent premises regarding any issue pending before this Honourable Court, or disrupting the operations of the Respondent regarding any issue pending before this Honourable Court or in any other manner whatsoever contacting, dealing with the Respondent regarding any issue pending before this Honourable Court. The said orders are granted.

11. I have also seen the proposed amendments of the Respondents statement in response and find the amendments necessary to enable the Court make a proper finding in the case. The amendment will not prejudice the Claimants. The respondent is therefore granted leave to file the Amended response within 7 days and serve the same on the claimants the hearing date will remain 5<sup>th</sup> December 2012 as already fixed.

Orders accordigly.

**DATED AND DELIVERED IN NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER 2012**

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

For Claimant \_\_\_\_\_

For Respondent \_\_\_\_\_