



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1593 of 2012**

**KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL**

**INSTITUTIONS AND ALLIED WORKERS .....CLAIMANT/APPLICANT**

**VERSUS**

**THE MANAGER, KENYA COMMERCIAL BANK CLUB.....RESPONDENT**

**RULING**

The application before court is the one dated 6<sup>th</sup> September 2012. The application was filed by the applicant Claimant herein against the Respondents through a Notice of Motion brought under Section 12(2) and (3) of the Industrial Court Act, 2011 and all enabling provision of Law.

The applicants seek orders:-

1. THAT, this application be certified as urgent and be heard *ex-parte* in the 1<sup>st</sup> instance.
2. THAT, this Honourable Court be pleased to issue summons to the Manager, KCB Sports Club to show cause why he should not be cited for failure to comply with Section 40(a) of the Employment Act, 2007.
3. THAT, this Honourable Court be pleased to cite the Manager, KCB Sports Club to stop forthwith the termination of the employees.
4. THAT, this Honourable Court be pleased to give orders to the Applicant for stopping the termination to the Union members.
5. THAT, unless the order sought herein is not granted, the Respondent will continue implementing the termination.
6. It is in the interest of Justice that the application herein is granted and orders given.

The application is supported by the grounds on the face of the application and supporting affidavit sworn by Mr. Albert Njeru. The applicants content that the Respondents have served the workers with notice of termination dated 14.8.12. The applicants further content that the Respondents' action was influenced by the Applicants Cause No. 438/2012 where the Union is demanding dues from the workers be affected through cheque off system which the Respondents have refused to implement in an attempt to defeat justice. The Respondents have given these workers notice to leave. The applicants state that after serving

notice to their members, they started to recruit other members in September, 2012. The applicants want Cause No. 438/2012 determined first before any other claim is determined.

In reply the Respondents submitted that the Respondents have complied with Section 40(1) of the Employment Act by notifying the affected employees of the intended redundancy. That the same has been communicated to the Provincial Labour Office.

The Respondent states that there is no recognition between them and the Claimant Union. The Respondents further state that the Appendix 4, 5, 6 to 6c are not letters of termination but of redundancy. The Respondents content that the request by the Claimants to have a meeting on 21.8.2012 at 11.00 a.m. under a letter dated the same day is unreasonable.

The Respondents state that the action by the Claimant was rushy. The Respondent say they are willing to follow up the proceeding and lay off the workers. They submit that this applicants is misplaced and should be dismissed as if it is the subject of recognition in another case the application should have been argued on the same file.

The Claimant further states that they saw the letter addressed to the Provincial Labour Office but this was not copied to them yet the Respondent was aware that the Claimant are members of their Union.

I have considered the submissions from both parties and also examined their pleadings filed herein. The law relating to redundancy is set out as Section 40 of the Employment Act 2007 which states as follows:-

**(a) where the employee is a member of a trade Union, the employer notifies the Union to which officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy.**

**(b) where the employee is not a member of the trade Union, the employer notifies the employee personally in writing and the labour officer;**

**(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, the ability and reliability of each employee of the particular class of employees affected by the redundancy;**

**(d) where there is existence a collective agreement between an employer and a trade Union setting out benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade Union;**

**(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;**

**(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and**

**(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days for each completed year of service.**

Looking at the law, it is implied that the Respondent if they consider Claimants as not being members of the Claimant Union, they should notify them of the intended redundancy as demanded under Section 40(b). The letter addressed to the Claimants is not a notice of redundancy but termination letters which is vague talking of restructuring and then of terminal dues.

The letter I believe is done in bad faith intended to be a redundancy notice whereas not stating so. If on the other hand as is known to the Respondents that the Claimant are Union members notice to the Union should have been given.

In either case the Respondent have not notified the Union nor the Claimant members of the intended redundancy as demanded by law. Procedures expected to be followed were not followed. There is also case No. 435/2012 pending before court which deals with the same issues. The Respondents were directed by this court to file their Response and to date they have not done so. The contention by the Claimants that the notices to the Claimants were meant to defeat the other Cause could be a possibility.

I therefore find for the Claimants and order as follows;

1. The Manager, KCB Sports Club do forthwith withdraw the termination of employment letters issued to the Claimants herein.
2. Since this case and Cause no.438 of 2012 deal with similar issues, the two files are hereby consolidated and will now proceed as one.
3. The order to remain in force until this case be heard and determined.

Dated, signed and delivered this 10th day of October, 2012 in the presence of Elly Jometh, Court Clerk, Mr. Njeru for Claimant /Applicant Union and Mr. Njiru for the Respondent.

**HELLEN WASILWA  
JUDGE**