



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 2040 of 2012

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS, HOSPITALS & ALLIED WORKERS.....CLAIMANT

VERSUS

GUSII MWALIMU SACCO HOTEL LTD.....RESPONDENT

RULING

M/S Doreen for Claimant

Mr. Mugikuyu for Claimant

The grievants' employment was terminated on 29th September, 2012 on the basis of redundancy. The Court issued an interim order to stop the termination on 15th October, 2012. The order had been overtaken by events because the workers had already been terminated. The matter has come before me today, 9th November, 2012 for *interparties* hearing to confirm the interim order.

Mr. Mugikuyu for the Respondent raised a Preliminary Objection to the Notice of Motion on the grounds that there is no Recognition Agreement between the Claimant Union and the Respondent and therefore, the Union lacks *locus standi* to prosecute this matter on behalf of the grievants.

Mrs. Doreen Nyasio argued the Application on behalf of the grievants seeking for the Interim Injunction to be confirmed while asserting that all the grievants are its members and were members before they were dismissed and therefore, the Union has *locus standi* in the matter.

The court at the outset observed that, it being a court of equity, it is mostly concerned with delivery of substantive justice to those who come before it. The Court further observed that confirmation of the interim order would serve no purpose as the horse has already bolted by fact of the termination of the grievants.

However, the Claimant still has an opportunity to prosecute the substantive claim on the basis that the declaration of the redundancies was unlawful and unfair. The Court further observed that the memorandum of claim as filed did not have sufficient information to enable proper hearing of the

substantive claim for each grievant and therefore required to be amended. List of relevant documents for each of the grievants also needed to be filed.

Accordingly the court finds as follows:-

1. The application to grant an injunction to stop termination of the employment of the grievants has been overtaken by events and same is dismissed.
2. The Claimant has *locus standi* to pursue the substantive claim on behalf of each of the grievants in their own names since they are members of the union

Accordingly, the Claimant is granted leave to amend its Memorandum of Claim and file all necessary annexures within fourteen (14) days from todate and serve the Respondent. The Respondent too is to file a Response within fourteen (14) days from the date of service. The Claimant to file a reply if any to the Respondent's Memorandum of Response within 7 days from the date of service. The matter thereafter to be allocated a hearing date at the Registry.

It is so ordered.

DATED and **DELIVERED** at Nairobi this 9th day of November, 2012.

Mathews N. Nduma

PRINCIPAL JUDGE