



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. E088 OF 2021

DOCKWORKERS UNION.....CLAIMANT

VERSUS

KENYA PORTS AUTHORITY.....RESPONDENT

AND

1. BERNARD A. AMAKE

2. STEPEHN NGENYA KAMAU.....INTENDED INTERESTED PARTIES/APPLICANTS

R U L I N G

1. The suit herein was instituted by the Claimant Trade Union on behalf of the grievants who are the Claimant's members, and whose names are listed in paragraph 3 of the Statement of Claim dated 14th September 2021 and filed in Court on 15th September 2021. The grievants are all unionisable employees of the Respondent, Kenya Ports Authority. The reliefs sought in the claim are as follows:-

- a) a declaration that the Respondent is bound by the disciplinary procedures adopted in the Human Resource Manual.
- b) a declaration that the show cause letters issued long after the period for initiating the disciplinary action had lapsed is (are) illegal and unlawful and the same amount to procedural unfairness.
- c) a permanent order of injunction to restrain the Respondent, its servants or agents from constituting a hearing panel to hear the grievants on the alleged offences they committed.
- d) costs of the suit.

2. The Claimant also filed, on 15th September 2021, a Notice of Motion dated 14th September 2021 seeking injunctive orders:-

- a) restraining the Respondent, its servants and or agents from commencing disciplinary proceedings against the grievants pending hearing and determination of the application.
- b) restraining the Respondent from taking any action which is prejudicial to the subject matter of the case against the grievants pending hearing and determination of the application.
- c) restraining the Respondent, its servants and or agents from commencing disciplinary proceedings against the grievants pending hearing and determination of the claim or further orders.
- d) restraining the respondent from taking any action which is prejudicial to the subject matter of the case against the grievants pending hearing and determination of the claim.
- e) costs of the application.

3. On 29th September 2021, the Claimant and the Respondent agreed to interim orders being granted in terms of (a) and (b) above. Interim Orders were accordingly granted. The application is pending hearing and determination.

4. In the meantime, one Bernard A. Amake, a non-unionisable employee of the Respondent, filed the Notice of Motion dated 24th September 2021 seeking to be enjoined to the suit herein as an interested party. Just like the grievants in the claim herein, the said applicant (hereinafter referred to as the 1st Intended Interested Party), is aggrieved by a letter to show cause issued to him by the Respondent on 24th August 2021, and states that he wants to be enjoined in the suit herein as an interested party in order to safeguard his interest which is not taken care of by the Claimant herein; and yet he faces the same predicament as sought to be addressed in the suit herein.

5. On 28th September 2021, one Stephen Ngenya Kamau (hereinafter referred to as the 2nd Intended Interested Party), filed a Notice of Motion dated 27th September 2021, seeking to be enjoined to the suit herein as an interested party in order to safeguard his interests which he alleges are not taken care of by the claimant herein, and yet he faces a similar predicament as is intended to be addressed in the suit herein.

6. Like the 1st Intended Interested Party, the 2nd Intended Interested Party is a non-unionisable employee of the Respondent and states that he was on 24th August 2021 served with a Show Cause letter by the Respondent with the aim of dismissing him from his employment.

7. The two applications by the 1st and 2nd Intended Interested Parties (dated 24th September 2021 and 27th September 2021 respectively) have not been opposed. Indeed, counsel for the Respondent told the Court on 2/11/2021 that the Respondent was not opposed to the Notice of Motion dated 27th September 2021. The Court directed that the two applications, dated 24/9/2021 and 27/9/2021 respectively, be heard together on 6th December 2021. Hearing of the applications proceeded orally.

8. Counsel for the 2nd Intended Interested Party told the Court that the intention of the Intended Interested Parties is to join the suit as parties thereto. He invited the Court to make such orders as may be appropriate.

9. For the Intended Interested Parties to present their respective grievances to this court and for them to seek any kind of relief against the Respondent herein, they will have to file and present proper pleadings to this Court. It is not clear how they intend to do so as interested parties in the suit herein.

10. Rule 4 of the Employment and Labour Relations Court (Procedure) Rules 2016 provides that **any party who wishes to refer a dispute to this court under any written law shall file a statement of claim setting out the particulars listed in that Rule**. Rule 7, on the other hand, provides for institution of petitions and judicial Review proceedings, while Rule 8 of the Rules provides for institution of appeals in this Court.

11. The 1st and 2nd Intended Interested Parties cannot, therefore, raise claims and seek reliefs against the Respondent by being enjoined in the suit herein as interested parties. They can only raise claims and seek reliefs against the Respondent, or indeed any other party, by instituting appropriate pleadings in the manner provided in the Rules.

12. If the Intended Interested Parties' intention is having their respective claims heard together with those of the grievants herein, they may, if and when their claims are filed, either seek consolidation of such suits as may appear to have some common question of fact or law as provided in Rule 23 of the Employment and Labour Relations Court (Procedure) Rules 2016 or seek to have a test suit selected and tried in accordance with Rule 24 of the said Rules.

13. In sum, I find no merit in the Notice of Motion Applications dated 24th September 2021 and 27th September 2021 respectively, and the same are hereby dismissed with no Orders as to costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 10TH DAY OF FEBRUARY 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Ochieng for Claimant

Ms. Lilian Kamau for Respondent

Mr. Tindi for Intended Interested Parties/Applicant