



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT

AT NAIROBI

CAUSE NUMBER E512 OF 2021

BETWEEN

KENYA ENGINEERING WORKERS UNION..... CLAIMANT

VERSUS

METAL CROWNS LIMITED..... RESPONDENT

RULING

1. In an Application dated 28th June 2021, the Claimant Union makes 4 main prayers. These are: -

§ The action of the Respondent herein, of intention to declare the undisclosed Applicant/ Claimant member be stayed by the interim order of the Honourable Court, pending the hearing and determination of this suit.

§ The Respondent not to replace the vacancies/ position of the Applicant/ Claimant members, pending hearing and determination of this suit and or changing their terms to outsourcing.

§ The Respondent to reinstate all the Applicant/ Claimant members who might have been declared redundant within the last 14 days before filing of this suit.

§ The Respondent is restrained from changing the terms and conditions of service of the Applicant/ Claimant members to outsourcing, pending hearing and determination of this suit.

2. The Application is based on the Affidavit of Claimant's General Secretary Wycliffe A. Nyamwata, sworn on 28th June 2021.

3. It is opposed through the Replying Affidavit of John Karari, Respondent's Human Resource Manager, sworn on 2nd November 2021.

4. He explains that the Respondent terminated some of its Employees' contracts on 21st May 2021, due to Covid-19. Termination followed consultations with affected Employees. They negotiated and were paid redundancy dues. They executed discharge certificates. Some of the Employees have filed Notices of Withdrawal of the Claim.

5. Parties agreed to have the Application considered and determined on the basis of their Affidavits and Submissions. They confirmed filing their Submissions at the last appearance in Court, on 3rd December 2021.

The Court Finds: -

6. The Pleadings presented by the Claimant are not sustainable. The prayers are not pleaded clear language. They are jumbled up.

7. A Claim cannot be brought on behalf of an undisclosed Employee.

8. Rule 4 of the E&LRC [Procedure] Rules, 2016, requires that a party who wishes to file a Claim shall provide the name, physical and mailing address and full particulars of the Claimant. Also, the Claimant shall provide the same details of any other party involved in the dispute. Grievants who are involved in a Claim, must be known.

9. It is not therefore acceptable for a Trade Union, to litigate on behalf of ghost Grievants.

10. The Claimant cannot obtain orders on behalf of an undisclosed Employee. The Court cannot reinstate unidentified Employees, or order that unknown Employees' terms and conditions of service, are not converted to outsourcing.

11. There are Notices of Withdrawal of the Claim by some of the alleged Employees on whose behalf the Claim was filed. There are Staff Discharge Certificates signed by persons who the Claimant has not disputed, were Employees of the Respondent, and members of the Claimant. Redundancy packages received by these Employees, are shown on the Certificates.

12. Strangely, the Main Claim names one Grievant Beatrice Akinyi Obonyo, and seeks among others, an interim order. Details of Beatrice Akinyi Obonyo, other than her name, are not given. How is an interim order to be granted with the final orders?

13. The Application and the Statement of Claim upon which it is founded, are bad in law and contravene the basic rules of pleading. They cannot be sustained.

IT IS ORDERED: -

a. The Application is declined.

b. The Statement of Claim is struck out.

c. Costs to the Respondent.

Dated, signed and released to the Parties electronically, at Mombasa, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 4th day of March 2022.

James Rika

Judge