



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO E272 OF 2021

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

METAL EQUIPMENT LIMITED.....RESPONDENT

RULING

1. By its Chamber Summons dated 30th March 2021 and filed in court on 1st April 2021, the Claimant Union seeks an order restraining the Respondent from victimising the Claimant's members, on account of union membership.
2. The application is supported by an affidavit sworn by the Claimant's General Secretary, Wycliffe Amakombo Nyamwata and is based on the following grounds:
 - a) That the Respondent has refused to deduct union dues from its employees who have joined the Union, in violation of Section 48 of the Labour Relations Act, 2007;
 - b) That the Respondent restricts its employees from joining the Claimant Union contrary to Article 36 of the Constitution on freedom of association;
 - c) That the Claimant has moved the Court under Section 74 of the Labour Relations Act;
 - d) That the parties are yet to sign a Recognition Agreement to pave way for negotiation of a Collective Bargaining Agreement;
 - e) That if the orders sought are not granted, the Claimant and its members shall suffer irreparable damage.
3. The Respondent's response is by way of a replying affidavit sworn by its Director, Balraj Singh Matharu on 28th April 2021.
4. Matharu terms the Claimant's application as vexatious, frivolous and an abuse of the court process.
5. He points out that the application seeks orders that are final in nature, similar to those sought in the Memorandum of Claim dated 30th March 2021.
6. Matharu states that the order seeking that the Respondent be compelled to effect deduction of union dues for its employees and remit the same to the Claimant holds the substratum of the main suit and if granted shall determine the suit with finality.
7. He further states that the order seeking that the Respondent be restrained from victimising its employees is unsubstantiated, baseless and malicious as no shred of proof has been furnished to demonstrate the alleged victimisation.
8. Matharu depones that no employee of the Respondent is a member of the Claimant Union so as to justify demand for union dues by the Claimant. He adds that there is no Recognition Agreement between the parties to create obligations between them.
9. The Respondent's first line of attack on the Claimant's application is that it seeks prayers that are final in nature which, if granted, will determine the main suit at the interlocutory stage.
10. The general principle that suits should not be determined at the interlocutory stage is well settled. In its written submissions filed on 21st

September 2021, the Respondent cites the decision in *Olive Mwhiki Mugenda & another v Okiya Omtata Okoiti & 4 others [2016] eKLR* where the Court of Appeal, in affirming its earlier decisions on this issue, stated:

“Analysis of the persuasive decisions from India shows that if a trial court is inclined to grant final orders at the interlocutory stage, this can only be done in exceptional circumstances and the reasons for granting such final orders must be stated. In the Indian case of Deoraj -v- State of Maharashtra & others, Civil Appeal No. 2084 of 2004, it was held that balance of convenience and irreparable injury need to be demonstrated before interlocutory final orders can be granted. In the Indian case, it was stated that a court could grant such final interlocutory orders if failure to do so would prick the conscience of the court resulting in injustice being perpetrated throughout the hearing and at the end, the court would not be able to vindicate the cause of justice.....

Applying the decisions of this Court in Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 others (2015) eKLR and Stephen Kipkebut t/a Riverside Lodge and Rooms -v- Naftali Ogola (2009) eKLR it has often been stated that an order which results in granting a major relief claimed in the suit ought not to be granted at an interlocutory stage.”

11. As between the prayers sought by the Claimant in its Memorandum of Claim and those sought in the interlocutory application, there is no difference. It follows that if the Court were to grant the Claimant’s wish at this stage, there would be no claim left for determination.

12. What is more, by its application, the Claimant makes allegations hinged on contested matters of fact but does not offer supporting evidence. Recruitment into union membership is a matter of fact that must be demonstrated by documentary evidence. It is not enough for a trade union to allege that it has recruited 50%+1 of unionisable employees in a particular establishment.

13. For the foregoing reasons, I find and hold that the Claimant has not made out a case for grant of the orders sought in its application which is hereby disallowed.

14. Each party will bear their own costs.

15. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OCTOBER 2021

LINNET NDOLO

JUDGE

APPEARANCE:

MR. ARAKA (UNION REPRESENTATIVE) FOR THE CLAIMANT

MR. ONDIEKI FOR THE RESPONDENT