



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRCC/E013/2021

CITATION: KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS

VERSUS

KRIMIR CRAFT LIMITED

ON 2021-07-16 BEFORE HON. JUSTICE J. N. ABUODHA

RULING

1. By a Motion dated 22nd March, 2021 the Claimant sought orders among others that

(i) That the Hon. Court do issue orders lifting the unlawful, unfair and indefinite suspension issued on 2nd June, 2020 and the employees be allowed to resume their normal duties without loss of benefits.

(ii) That the Honourable court do order the Respondent to pay the suspended employees their withheld salaries from the date of suspension.

2. The application was supported by the affidavit of Rogers Ombati who deponed on the main that

(i) THAT I am the Branch Secretary of the Applicant Union in charge of membership recruitment in the North Rift Region who coordinated and supervised the recruitment of the Respondent's employees to join the Applicant union.

(ii) THAT on 30th January, 2020 the Applicant addressed the Respondent over their employees Trade Union membership and sent a draft copy of the model Recognition Agreement for their study and ensuing signatures to recognize the Applicant but the Respondent declined to allow a meeting to take place.

(iii) THAT the Applicant reported a Trade Dispute on 27th February, 2020 where a conciliator was appointed. The conciliator converted several meetings in an attempt to amicably resolve the dispute but the Respondent remained adamant and refused to recognize the Union and equally failed to deduct Union dues.

(iv) THAT as soon as the conciliator released his report and findings, the Respondent started intimidating their employees through a series show cause letters and eventually issued suspension letters to the 14 employees.

(v) THAT the Respondent called the police who together with the security guards forced the employees out of the company premises alleging that the employees were on strike which was not true.

(vi) THAT the Respondent has withheld the salaries of the employees who are on suspension without any justifiable reason in order for the suspended employees to denounce their trade Union membership.

3. The application was opposed by the respondent who filed a replying affidavit through one Kantilal Nanji Mani who deponed in the main that:

(i) THAT I am duly competent to swear this replying affidavit on behalf of the respondent.

(ii) THAT sometime in April, 2020 we informed all the respondent's employees that the respondent was facing financial distress as business had gone down due the effects of Covid-19 pandemic in the country.

(iii) THAT for the reasons aforesaid, we informed the employees that some of them would be given unpaid leave as the respondent was not in a sound financial position to continue keeping and paying salaries to all of them.

(iv) THAT on 30th May, 2020 we issued notices for unpaid leave to the following three employees, Henry Waswa , Joh Oduor and Reuben Musime and the said employees received but refused to sign the said notices. Further, we sent copies of the said notices to the County Labour Offices.

(v) THAT on 2nd June, 2020 the said three employees ignored the aforesaid notices for unpaid leave and reported back to work and mobilized and/or incited the remaining eleven employees to go on a strike.

(vi) THAT therefore the remaining eleven employees refused to work on 2nd June, 2020 and demanded that they would only resume work if the respondent cancelled the unpaid leave notices issued to Henry Waswa, John Oduor and Reuben Musime and allow them to continue working.

(vii) THAT we therefore issued suspension letters to all the fourteen employees as they embarked on the strike without any reasonable cause and without giving the respondent 21 days' notice as stipulated under the Law.

(viii) THAT the employees took the suspension letters but refused to vacate the respondent's premises despite several requests by the respondent's security officers to vacate the premises.

(ix) THAT we therefore had to call the Eldoret Central Police Officers to come and disperse the striking employees from the respondent's premises.

(x) THAT on 3rd June, 2020, the following employees, Fredrick Wasike, Wilbeforce Wekesa , Collins Mutai and Isaac Situma came back to the respondent's work place and all of them wrote letters apologizing for engaging in a strike on 2nd June, 2020 and we allowed them back to work.

(xi) THAT on 5th June, 2020 and 16th June, 2020 the following employees Kevin Omondi, Richard Omondi and Reuben Musime reported back to work respectively and also wrote letters apologizing for their participation in a strike on 2nd June, 2021 but when we asked them to sign new employment contracts, they refused and left and have since never reported back to work.

(xii) THAT it is clear from the foregoing that the employees herein were suspended because they embarked on a strike without any reasonable cause and without giving the respondent 21 days ' notice as required by the Law and further that the cause of the strike by the employees herein and their subsequent suspension was as a result of the notice for unpaid leave issued by the respondent to the three employees as explained in paragraphs 7,8,9 and 10 above.

(xiii) THAT it is therefore not true that the respondent suspended the employees herein so as to frustrate their right to association and freedom to join a trade union as alleged by the Claimant herein or at all.

(xiv) THAT if anything, the respondent has always been ready to recognize the employees trade union membership and in fact, it had requested the claimant to forward to it the names of the recruited employees so that it could begin deducting and remitting the union dues therefore but it is the Claimant that has failed, ignored and/or refused to do so.

(xv) THAT at the time of suspension, the employees had been paid all their dues and the Respondent therefore does not owe them any money.

4. The Court has carefully reviewed and considered the application and response thereto and it would seem that the respondent has denied chasing away and or suspending indefinitely the grievants. According to the respondent, the grievants engaged in an unlawful strike. The Claimant union has not produced any strike notice as required by law further the Claimant union has not entered into a recognition agreement with the respondent for purposes of collective bargaining. The respondent has indicated their willingness to enter into a recognition agreement with the Claimant union. Further the respondent has indicated that most of the employees who participated in the strike had tendered their apologies but refused to sign new contracts when they were offered.

5. From the foregoing the Court is of the view that the dispute between the parties is capable of amicable settlement. The Court therefore will not grant the orders sought in the application since by their very nature they are the orders sought in the main suit.

6. The respondent in its submissions states that it would not be possible to reinstate the grievants since their positions have been substantially filled. This issue can be negotiated by the parties and a settlement reached including exit arrangement for the grievants . In any event it would not be appropriate to grant reinstatement at the interlocutory stage.

7. The Court therefore orders that the dispute herein be submitted for conciliation by the County Labour Office on the issue of recognition of the Claimant Union and reinstatement terms for the grievants or if not possible, exit arrangement in accordance with the Employment Act.

8. The matter will be mentioned in 60 days from the date of the ruling that is on the 10th day of January, 2022 for further directions or recording of settlement.

9. It is so ordered.

GIVEN under my hand and Seal of this Court on 2021-11-02 12:43:36

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE:

2021-11-02

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