



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 939 OF 2015**

**BETWEEN**

**TRANSEAST [K] LIMITED.....CLAIMANT**

**VERSUS**

**DOCK WORKERS UNION.....RESPONDENT**

**RULING**

1. The Claimant filed this Claim on 17<sup>th</sup> December 2015. It sought to have an intended strike, called by Respondent's Officials, declared unlawful and unprotected. The Statement of Claim was accompanied by an Application for provisional measures, barring Respondent's Official and Members from calling and/or participating in the intended strike.

2. The Application was allowed in a Ruling of the Court, dated 15<sup>th</sup> December 2017.

3. The Respondent argues that it had, with the Statement of Response, filed a Counter-Claim, seeking *inter alia*, the following orders against the Claimant: compel the Claimant to recognize the Employees [not the Union?]; Declaration that purported redundancies carried out by the Claimant in the months of June and November 2015 were unlawful; notice as provided in the existing CBA; severance as per existing CBA; and compensation for unfair termination equivalent of 12 months' salary.

4. The Court, after the Ruling of 17<sup>th</sup> December 2015, deemed the substantive dispute dealt with, the main issue having been the intended strike, which was nipped in the bud. By way of directions issued on 15<sup>th</sup> March 2019, the Court closed its file in the absence of the representative for the Respondent, but in the presence of Claimant's Counsel. It was ordered that: the matter was disposed of through the Ruling of the Court dated 15<sup>th</sup> December 2017; there are no outstanding triable issues; and the file is closed. The date for directions issued in the presence of both Parties' representatives.

5. This precipitated the Application by the Respondent filed on 28<sup>th</sup> March 2019, which seeks to have proceedings restarted, with the Respondent's Counter-Claim heard.

6. The Claimant relies entirely on the Replying Affidavit of its Counsel Beatrice Opolo sworn on 2<sup>nd</sup> July 2019, while the Respondent relies on its Executive Officer Rufus Ochieng's Affidavit, sworn on 27<sup>th</sup> March 2019, as well as Written Submissions filed on 3<sup>rd</sup> December 2019.

**The Court Finds:-**

7. In its Ruling of 15<sup>th</sup> December 2017, the Court dealt with 2 Applications filed by the respective Parties.

8. The Application by the Claimant seeking to stop the strike action was allowed. The Court was satisfied that the action was unlawful and unprotected. There was nothing in the Statement of Claim, left for trial.

9. The Counter-Claim sought orders in nature of declaration, recognition, redundancy benefits and compensation for unfair termination. The Application by the Respondent sought to have the Claimant stopped from proceeding with redundancy process.

10. The Court rejected the Application filed by the Respondent, finding that the Respondent did not have the capacity to represent the Employees of the Claimant. Redundancy in question was being carried out in accordance with a CBA concluded between the Claimant and the Transport and Allied Workers Union [TAWU]. The Respondent had no stake in that CBA and no capacity at all, in seeking enforcement of the CBA. It is not clear from the wording of the Counter-Claim, what kind of recognition is sought. Is it the Union which seeks

recognition, or is it the Employees purported to be its Members? The Court was satisfied that the Respondent has no capacity to represent the Counter-Claim. The Respondent disclosed there is /was another Claim involving the Parties and TAWU, E&LRC Cause No. 519 of 2015, which related to recognition. Why does the Respondent seek recognition, in whatever form, from the same Employer in a different Claim? If the Respondent has any grievances against the Claimant and any other Union, those grievances should be, or should have been, ventilated in Cause Number 519 of 2015. The Respondent should avoid filing multiple Claims, over the same issues in dispute.

11. Therefore, the Court was correct on 15<sup>th</sup> March 2019, to find there are no outstanding issues, having dealt with the main issues, through the 2 Applications presented by the Parties.

12. The Court must record that it has been compelled to sign and release this Ruling from the confines of the Trial Judge's home at Chaka, Nyeri County, owing to the covid-19 pandemic. Other modes of delivery are not in the view of the Court failsafe, of safe for the participants. Online delivery would require some degree of physical participation by Court Staff setting up the platform. The platform is not secure from hackers and is prone to constant interruption, unsuitable for judicial discourse. The place of trial Mombasa, has been identified as a hotbed of the pandemic, and while the wheels of justice must be kept rolling, lives must be protected. The requirement for delivery of decisions of the Court in Open Court under Rule 28 of the E&LRC [Procedure] Rules 2016, must be restrained by Rule 38, which enables the Court to retain control of its proceedings.

IT IS ORDERED:-

*a. The Respondent does not have capacity to bring the Counter-Claim on record.*

*b. The Counter-Claim is struck out.*

*c. The Court reiterates that there are no outstanding triable issues.*

*d. The file shall be marked as closed, as ordered on 15<sup>th</sup> March 2019.*

**Dated, signed and released at Chaka, Nyeri County for dispersal to the Parties, this 29<sup>th</sup> day of May 2020.**

**James Rika**

**Judge**