



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1160 OF 2018

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT

- VERSUS -

ESSENTIAL MANAGEMENT CONSULTANCY SERVICES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 23rd October, 2020)

JUDGMENT

The memorandum of claim was filed on 09.07.2018 through Rose Auma Omamo, General Secretary for the claimant. The claimant prayed for judgment against the respondent for:

a) That the Honourable Court finds the actions of the respondent in locking out the employees without informing them what was happening a contravention of Article 41(1) of the Constitution of Kenya, 2010.

b) The Honourable Court do compel and restrict the respondent to act as per the agreement jointly signed at COTU (K) which is annexure 2 without any loss of status, rights and privileges.

c) That costs of the suit be awarded in favour of the claimant.

The claimant is a registered trade union. Its case is as follows:

a) The respondent is the employer of 95 employees who were locked out.

b) The claimant is the only trade union involved in the dispute.

c) The reason for the lock out was that the employees had voluntarily joined the union per check-off forms they signed being exhibit 1 on the memorandum of claim.

d) The respondent is resisting recognition of the trade union.

e) The employees were locked out on 28.06.2018.

f) The respondent failed to cooperate with the labour officer and the claimant invited COTU to assist. Some of the employees that were locked out were employed way back in 2003. The parties then concluded an agreement before COTU dated 21.06.2018 in the following terms:

1) Management cleared on the claims that the complaining employees have been dismissed verbally. The CEO Mr. Aggrey Anduuru cleared that no employee has been dismissed, it was just an arrangement plan to relocating from Lunga Lunga Pipeline to Ruiru.

2) Management will consult with their client on the relocation allowance and disturbance allowance before relocating and it will give feedback to his employees in writing.

3) No apology letter and victimization of the employees.

4) Continuous good working relationship as usual.

g) The claimant prays that that agreement is upheld.

The reply to the memorandum of claim was filed on 17.08.2018 through Kulecho & Company Advocates. The respondent's case is as follows:

a) The respondent employed the employees in issue on contract from 01.04.2018 to 30.06.2018.

b) The contracts expired on 30.06.2018. the employees were never locked out. At the time the respondent was relocating from Lunga Lunga to Ruiru and the workers were informed accordingly. The employees opposed the movement and molested the respondent's team and stole their valuables. A report was filed with the police in that regard.

c) The claimant is not entitled to the prayers sought and the suit be dismissed with costs.

Parties filed their respective submissions. The only issue for determination is whether the remedies should issue.

The Court finds that the respondent has not denied the signing of the agreement before COTU dated 21.06.2018. The evidence is that both parties to the suit signed the agreement and they must be bound accordingly. The suit will succeed accordingly. The Court further considers that since the agreement concluded the dispute about the lock out, the Court shall not investigate the matter of the lockout beyond the parties' own agreement resolving the issues amicably.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- 1) The declaration that the agreement before COTU dated 21.06.2018 is binding and the respondent to act accordingly.
- 2) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered by the court at Nairobi by video-link this Friday 23rd October, 2020.

BYRAM ONGAYA

JUDGE