



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1553 OF 2018

BANKING, INSURANCE AND FINANCE UNION.....CLAIMANT

VERSUS

MIDDLE EAST BANK (K) LIMITED.....RESPONDENT

RULING

1. On 26 November 2018, the Banking, Insurance and Finance Union (the Union) instituted legal proceedings against Middle East Bank (K) Ltd (the Respondent) seeking a declaration that some 4 named employees were unionisable and were entitled to enjoy and benefit from the terms and conditions of employment agreed in a collective bargaining agreement between the parties.
2. In a judgment delivered on 24 January 2020, the Court issued a declaration that the 4 named employees were unionisable and were covered by the collective bargaining agreement in place from 2017. The Court also awarded the named employees arrears of salaries/allowances.
3. On or around 27 February 2020, the Respondent transferred one of the named employees, David Onamu to the Liabilities Department as a Relationship Officer, Head Office.
4. The employee acknowledged the transfer through an email dated 3 March 2020 but also indicated that he had concerns about payment of a disturbance allowance.
5. Upon declaration of COVID19 public health pandemic, the Respondent sent some employees including Mr Onamu, on leave.
6. On 10 July 2020, the Respondent placed Mr Onamu on performance improvement program to run up to 31 August 2020. The Respondent alleged that the employee's performance overall performance during Quarter 2, 2020 was not satisfactory. The performance was to be reviewed weekly.
7. The Respondent was not satisfied with Mr Onamu's performance and his supervisor sent him an email on 22 July 2020 requesting him to indicate how he intended to meet his expected outcomes. He was also warned of a risk of action in terms of the Respondent's human resource guidelines on performance.
8. The actions of the Respondent made Mr Onamu fear for his job security and he caused the Union to move the Court through a Motion dated 12 August 2020 seeking orders

1. ...

2. **THAT** the Honourable Court be pleased to issue interim ex-parte orders restraining the Respondent from terminating or attempting to terminate the services of Mr. David Onamu from employment due to performance management programme until the hearing and determination of this application inter-partes.

3. **THAT** the Honourable Court do issue further orders compelling the Respondent to stop conducting the unfair and skewed performance management appraisals on the unionisable employees an action which is aimed at unfairly and unlawfully terminating the services of innocent employees under the pretext of non-performance until the hearing and determination of this application inter-partes.

4. **THAT** the Honourable Court further order for the payment of disturbance allowance of Kshs 310,912/- to Mr. David Onamu due to his transfer from Eldoret to Nairobi on 27 February 2020 as required by clause AB30 of the collective bargaining agreement.

5. Costs of this application be provided for in favour of the applicant.

9. The Respondent filed a replying affidavit sworn by its Human Resources Manager in opposition to the Motion on 16 September 2020.

10. When the Motion was placed before the Court on 22 September 2020, it directed the parties to file and exchange submissions ahead of the delivery of this Ruling.

11. On 30 September 2020, the Union wrote to the Deputy Registrar of the Court stating that it wished to have the Motion to be mentioned before the Court to have it withdrawn because *it was not properly filed*.

12. It is correct as posited by the Union that the Motion was *not properly filed* as the facts upon which the Motion is anchored arose after the Court had determined the cause of action which had been advanced through the Cause, the subject of the Judgment of 24 January 2020.

13. In light of the desire by the Union and in consideration of the protocols on COVID19 public health pandemic and that the parties have not filed submissions as of today, the Court will mark the Motion dated 12 August 2020 as withdrawn with no order on costs.

14. This Ruling will be uploaded on the e-filing portal.

Delivered through e-filing portal, dated and signed in Kisumu on this 6th day of November 2020.

Radido Stephen

Judge

Appearances

For Union Mr. Odero, Organising Secretary, Banking, Insurance & Finance Union

For Respondent Mr. Namasake instructed by J.N. Namasake & Co. Advocates

Court Assistant Lindsey