



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 837 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

BOLLORE AFRICA LOGISTICS LIMITED.....1ST CLAIMANT

MOMBASA CONTAINER TERMINAL LIMITED.....2ND CLAIMANT

VERSUS

AVIATION AND AIRPORT SERVICERS

WORKERS UNION (K).....RESPONDENT

AND

KENYA AVIATION WORKERS UNION.....INTERESTED PARTY

JUDGMENT

This claim was filed by the two claimants herein against Aviation and Airport Services Workers Union (Kenya) the respondent with Kenya Aviation Workers Union cited as Interested Party.

The 1st Claimant is involved in the provision of transport and logistical services within the country and beyond, which services the 1st Claimant has been providing over a very long period of time as part of the overall Bollore Group, a global entity providing services cutting across several sectors.

The 2nd Claimant is an entity incorporated by the 1st claimant for purposes of provision of container cargo logistics services and is based in Mombasa.

The Claimants approximate workforce at present constitutes of over Five Hundred (500) unionisable employees shared between the rival unions being Kenya Aviation Workers' Union the Interested Party, and the Respondent. A majority of the employees are stationed at the 1st claimant's premises with the others working at the 2nd Claimant's premises.

The Claimants and the Interested Party have a recognition agreement by virtue of its majority representation as t e time of negotiating the agreement, and pursuant thereto executed a collective gaining agreement for the period 2016 – 2017.

The claimants aver that on the 25th May 2018, the Respondent served upon the claimants a notice of intention to call for Industrial Action through the withdrawal of labour of the claimants' workforce, citing four grounds for the intended strike. The Claimants further aver that the matters forming the subject of the intended strike are also under active consideration either between the Claimant and the Union or before this court through cause number 2343 of 2017, with the issue regarding negotiation of a new CBA and Recognition Agreement pending for determination.

The Claimants aver that the Respondent is one of the parties to the two claims and is well versed with the said issues and aware of the current position.

The claimants seek the following orders –

- a) A declaration that the Respondent not having complied with the mandatory provisions as set out at Part X of the Labour Relations Act, any strike called pursuant to the notice dated 25th May 2018 is illegal and unlawful and unprotected;

b) A declaration to the effect that the matters forming the subject of the notice dated 25th May 2018 are matters regulated by the Collective Bargaining Agreement executed between the Claimant and the interested Party and are matters under active consideration between the two entities as well as before the court and consequently cannot in the absence of determination as provided be the subject of a strike;

c) An order restraining the Respondent either by itself, its members, agents, employees or proxies from calling or engaging in any withdrawal of labour, assemblies, gatherings, mass rallies or any related adverse actions in furtherance of the notice by the Respondent dated 25th May 2018;

d) Costs of this claim.

The judgment in Cause No. 2343 of 2017 was delivered on 28th September 2018. The court made the following findings –

1. That there is no evidence of termination of recognition agreement between the claimant (the 1st claimant herein) and the respondent.
2. That there is no evidence of the Interested Party having achieved majority membership to oust the respondent from recognition by the 1st claimant.
3. That the Interested Party acted in bad faith by signing recognition agreement with the 1st claimant herein the day before delivery of a decision of stay of execution of the orders deregistering the respondent by the Court of Appeal and without proof of majority membership of the Interested Party.
4. That the respondent had no capacity to enter into a recognition agreement with the Interested Party as it had a subsisting recognition agreement with the respondent.
5. That the recognition agreement signed on 2nd February 2017 between the 1st claimant and Interested Party was therefore a nullity.

In view of the findings the court made the following orders

“For the foregoing reasons I declare that the respondent has no capacity to negotiate a CBA with the Interested Party, as there is no valid recognition agreement between the respondent and the Interested Party. I therefore issue an injunction stopping the respondent from negotiating or registering any collective bargaining agreement between the respondent and the Interested Party for as long as there is a valid recognition agreement between the Claimant and the Respondent.

I further declare any negotiations of collective bargaining agreement between the respondent and Interested Party while there is a valid recognition agreement between the claimant and respondent to be null and void.

Any prayer in the memorandum of claim or application of the claimant dated 23rd November 2017 that is not granted herein is deemed to have been declined.”

In view of the findings and orders in Cause No. 2343 of 2017 as set out above, the substratum of the claim herein collapses, the recognition agreement and the Collective Bargaining Agreement between the 1st claimant and the Interested Party having been declared null and void.

The claim herein thus collapses and is marked as terminated. There shall be no orders for costs.

For the avoidance of doubt the Recognition Agreement and Collective Bargaining Agreement for the period 2016 – 2017 between the 1st claimant herein **Bollore Transport and Logistics Kenya Limited** and the Interested Party herein **Kenya Aviation Workers Union** is declared null and void. The court further declares that both the Recognition Agreement and Collective Bargaining Agreement between the 1st claimant Bollore Transport and Logistics Kenya Limited and the respondent Aviation and Airport Services Workers Union (Kenya) are valid and in force.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH JANUARY 2019

MAUREEN ONYANGO

JUDGE