



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.43 OF 2019

JACKSON M ITALAKUA.....1ST CLAIMANT

ANGELA BIRIR.....2ND CLAIMANT

VERSUS

KENYA FARMERS ASSOCIATION LIMITED.....RESPONDENT

RULING

The claimant filed application and Notice of Motion dated 18th July 2019 and brought under the provisions of Articles 20, 22, 23, 41(1) and 50(1) of the constitution and Rule 17 of the Employment and Labour Relations Court Act [should be Employment and Labour Relations Court (Procedure) Rules, 2016 as section 17 of the Act relates to the filing of Appeals] and seeking for orders that;

1. Spent.
2. *This court be pleased to stay the decision of the respondent to restrain the claimants from accessing their offices pending the hearing and determination of this application.*
3. Spent.
4. *This court be pleased to issue an order restraining the respondent, its agents, servants and anybody claiming through it from harassing, intimidating, threatening, investigating, dismissing, suspending, discussing, passing a decision and in any other way interfering with the claimant's employment until hearing and determination of the main suit.*
5. *Cots be provided for.*

The application is supported by the affidavit of the 1st claimant and on the grounds that the claimants were appointed as Marketing and Human Resource Managers respectively on 15th October, 2008 and have since diligently undertaken their duties but have now been restrained from accessing their offices without due process or there being any reasons warranting such action. Such is only done to damage the reputation and careers of the claimants by the respondent. such is contrary to fair labour practices.

The action taken by the respondent against the claimant is not provided for under the human resource manual, it is irregular and actuated by malice and unfair. There shall be no prejudice upon the respondent if the orders sought are granted.

In his affidavit the 1st claimant Mr Italakua avers that the respondent has through the managing director restrained him and the 2nd claimant from accessing their offices without giving any reason(s). on 17th July, 2019 when he reported to work he was informed by the security guard at the gate that the managing director had issued instructions that he should not be allowed into the premises. The claimant tried to find out why such instructions had issued or notice issued but none were available.

While the claimant waited for information, the shop steward arrived with goon who threatened to lynch him and destroy his vehicle and for safety he had to leave. No notice or prior hearing was allowed and such actions by the managing director amount to breach of the employment contract and in violation of the right to fair labour practices.

In reply the respondent filed the Replying Affidavit of Symon Cherogony and who avers that he is the managing director of the respondent and conversant with the claims made. He further deposes that the claimants have not been restrained from accessing their offices as alleged

and upon carrying out investigations into these allegations and due to financial constraints facing the respondent it cannot review salaries of its employees.

It also emerged that the claimants filed this suit and informed other employees so as to agitate for the review of their salaries and who then felt betrayed by the claimants. Bad blood developed between the claimants and other employees to the extent that they turned hostile against the claimants and decided to lock them out of the office and which was not sanctioned by the respondent of the depot as the managing director.

Mr Cherogony also avers that the acts alleged by the claimants were undertaken by independent persons outside of the respondent and therefore should not be attributed to the respondent. Where the respondent is desirous of taking disciplinary action against the claimant such power shall be exercised within the terms of the employment contract and such prerogative should not be interfered with by the process of the court.

The claimants filed a Further Affidavit and where they aver that they have never been involved in any advocate related to financial position of review of employees' salaries or filed suit to force the respondent to review salaries to their advantage and in exclusion of other employees. The managing director misrepresented its employee that the claimants had filed a suit seeking that the respondent be placed under receivership which could lead to loss of employment. Since the respondent has withheld salaries owing to the claimants without any sufficient cause.

Both parties made oral submissions.

The court has since directed for the payment of the due salaries/wages owing to the claimants. The respondent confirmed in the oral submissions that the claimants are its employees and as long as such employment subsists, the respondent has a duty to pay the due salaries/wages and the attendant benefits until and unless such employment is terminated for any other lawful cause.

On 8th July, 2019 the claimants filed suit and setting out the issues in dispute as being;

(a) Failure to honour contract of employment

(b) Underpayment of salary and allowances.

The prayers and final orders sought are that there is breach of contract and the claimant are seeking the payment underpaid in salary and allowances and costs.

Following the filing of the claim, the claimants have now moved court seeking to be allowed access to their offices by the respondent. That such access has been denied following the instructions of the managing director.

The respondent in response and the Replying affidavit of Mr Cherogony avers at his paragraph 9 read together with 7 and 8 that;

It is within my knowledge that my inquiries have revealed that as a result of the claimants' acts aforesaid [that the claimants have instituted this suit to force the respondent to review their salaries to the exclusion of all other employee ... that the respondent's other employees felt betrayed by the claimants] there developed bad blood between the claimants and their fellow employees to the extent that the respondent's other employees turned hostile against the claimants.

As noted above, the claimants remain the employees of the respondent. They have contracts of service with the respondent. As long as such employment subsists, and without there being any lawful cause to justify work non-attendance, the claimants under the terms and conditions of their contracts of service are required to attend work and be guaranteed a safe and secure work environment.

On the admission by Mr Cherogony in his Replying Affidavit dated 7th August, 2019 that there are employees who have become hostile to the claimants, such conduct should be addressed firmly and decisively and not used to lock out the claimants from their workplace. To allow other employees to harass and intimidate other employees and drive them out of the workplace for whatever cause that is unlawful and then claim that such persons are actors acting independently is to encourage chaos, anarchy and contrary to fair labour practices.

Hostility and threats to assault from other employees directed at the claimants is therefore not conducive to harmony or to productive work force. Faced with such conduct, Mr Cherogony as the managing director of the respondent should be worried and concerned that under his watch and management, employees under his supervisor have resulted to such conduct directed at the claimants. Such is to negate the very essence of fair labour relations and rule of law.

Such is not conducive to industrial peace.

The claimants should be shielded by the employer from any hostilities directed at them at their place of work. The managing director cannot stand as an innocent bystander and claim that other employees feel aggrieved and thus allowed to drive out any employee and especially the claimants since they feel aggrieved by their filing this suit.

In view of the application and notice of motion before court and pending the hearing of the main suit filed by the claimant and seeking various orders, it is apparent that the orders sought in the Notice of Motion should issue. This does not take away the employer's prerogative to discipline its employees and the claimants where there is a justifiable cause.

Accordingly, pending the hearing and determination of this suit and pending the continued employment of the claimants by the respondent and until and unless such employment is terminated for any lawful cause the following orders hereby issue;

(a) The claimants shall forthwith be granted unconditional access to the workplace and allowed to undertake their duties as Marketing and Human Resource Managers respectively;

(b) The respondent shall ensure and guarantee a safe and secure work environment for the claimants;

(c) The claimants shall continue to recover their due salaries/wages and benefits therefrom unless there is any other justifiable cause to remove such benefit;

(d) The respondent is hereby restrained by itself, its agents, servants and anybody claiming through it from harassing, intimidating, threatening, or in any manner denying the claimant a conducive work environment;

(e) Costs shall be met by the respondent.

Delivered at Nakuru this 9th day of October, 2019.

M. MBARU

JUDGE

In the presence of: