



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 63 OF 2018

(Before Hon. Justice Mathews N. Nduma)

NZOIA WATER SERVICES COMPANY LIMITED.....CLAIMANT/APPLICANT

VERSUS

KENYA COUNTY GOVERNMENT WORKERS UNION.....RESPONDENT

RULING

1. The application dated 5th November 2018 seeks for orders *inter alia*:

- (a) Restraining the Respondent or its officials and agents from inciting employees of the applicant to take part in a strike in terms of a seven days' notice issued by the respondent union dated 25th October 2018.
- (b) That the respondents be restrained from making demands to the claimant until the parties sign a Recognition Agreement and a Collective Agreement.
- (c) That the court do declare the intended strike notice illegal and/or unprotected.

2. The application is based on grounds set out in the Notice of Motion and numbered 1-9 the nub of which is that the intended strike notice is unlawful since the parties have no Recognition Agreement nor a Collective Bargaining Agreement. The application is further buttressed by a supporting affidavit of the Acting Managing Director Mr. Kennedy W. Kilaci.

3. The application is opposed vide a replying affidavit of Michael Mutahi Wachira, the National treasurer of the Respondent Union. From the deposition in the replying affidavit, it is clear that the respondent union had recruited employees of the claimant as its members. That the claimant union submitted forms to the Ministry to obtain authority for deduction of union dues from the salary of its members by the claimant.

4. That the Minister of Labour authorized deduction of union dues by the claimant from its members and Gazetted an account under Gazette Notice No. 10698 for purpose of union deductions. That the respondent submitted a draft recognition agreement to the claimant with a view to get the claimant to recognize the union.

5. It is clear from the respondent's deposition that the claimant refused and/or delayed to recognize the union and to deduct union dues.

6. The respondent does not deny that it issued a strike notice dated 25th October 2018 pursuant to this dispute.

Determination

7. There is no recognition agreement between the claimant employer and the respondent union in terms of *Section 54(1) of the Labour Relations Act 2007*. The respondent did not report a dispute regarding failure by the claimant to recognize the union and refusal to deduct union dues in terms of *Section 62 and 74 of the Labour Relations Act*. Indeed under Section 74, it is provided:

“A trade union may refer a dispute to the industrial court as a matter of urgency if the dispute concerns:

(a) The recognition of a trade union in accordance with Section 62”

8. *Section 76 of Labour Relations Act* provides circumstances under which a strike notice may be issued. These include *inter alia* where:

“(b) *The trade dispute is unresolved after conciliation*”

Under the act or a registered collective agreement.

9. It is not in dispute that the parties here do not have a recognition agreement nor a collective agreement. It is also not in dispute that the respondent union upon being aggrieved by the decision by the claimant not to recognize it and not to deduct union dues did not report a dispute for conciliation by the minister of labour nor did the union approach court under Section 74 of the Labour Relations Act. Instead, the respondent took to self-help by issuing a 7 days strike notice to the claimant which is manifestly in violation of express provisions of the Labour Relations Act 2007.

10. Accordingly, the applicant has satisfied the requirements as per the case of ***Giella vs Cassman Brown Limited*** and interim orders issued by Hon. Justice Rika on 7th November 2018 are hereby confirmed.

11. Accordingly, the court issues the following orders:

(a) The respondent and/or its members employed by the claimant are restrained from taking any strike action according to the strike notice dated 25th October 2018 issued by the respondent pending the hearing and determination of the suit.

Ruling Dated, Signed and delivered this 9th day of October, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Mogaka for claimant/applicant

Mr. Otieno for Respondent

Chrispo – Court Clerk