



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 676 OF 2018

TAILORS AND TEXTILES WORKERS UNION.....CLAIMANT

VERSUS

HELA INTIMATES (EPZ) LIMITED AND ALLTEX (EPZ) LTD...RESPONDENT

R U L I N G

1. By Notice of Motion dated 8th August, 2018 the Claimant applicant sought orders that the MD of Hela intimates EPZ Limited appear before the Court forthwith and show cause why the Company has disobeyed and or ignored the Court order dated 28th June, 2018 and further the said MD appear before the Court and show cause why he should not be cited for contempt of Court.
2. The application was brought on the grounds among others that the 1st respondent was served with a Court order on 2nd July, 2018 and that the respondent has since proceeded to terminate the services of the Claimant's 18 union members on account of association or membership to the union. The 1st respondent had therefore violated and disobeyed the Court Order of 28th June, 2018 and treated the Court with contempt and impunity and continues to do so.
3. The application was further supported by the affidavit of Rev. Joel Chebii who deponed on the main that despite the Court orders, the 1st respondent proceeded to verbally terminate the services of 18 of the Union members for putting on Union T-shirts. The respondent further proceeded to make a false report to EPZ Police Station under OB No, 11/9/7/2018 that the Union members were planning an illegal strike leading to the arrest of the 18 members.
4. Mr. Chebii further stated that he was the one mandated by law to issue a strike notice and had not issued any strike notice hence the report to the police about the strike was malicious and calculated to justify unlawful termination of the 18 employees.
5. The 1st respondent filed a Replying affidavit through one Monica Kamau who stated she was the respondents Human Resource Manager. She further stated that contrary to the Claimant's averments the respondent had not terminated the services of the nineteen employees. The said employees were suspended after they jointly plotted to storm the 1st respondent's factory on 9th July, 2018 with intention of endangering the lives of other employees and causing malicious damage to 1st respondent's property.
6. The said employees were arrested by the Kenya Police who were carrying investigations in the matter. In the meantime, the said employees had been issued with notices to show cause which they were yet to respond to.
7. Ms Kamau further stated that despite neglecting to respond to the Notice to show cause, the 1st respondent has continued to maintain them on the pay roll on half pay. She also stated that the Court orders specifically restrained the 1st respondent from unprocedural termination retrenchment and or redundancies. The order did not restrain the first respondent from taking any of its employees through a procedural disciplinary process as to do so would unjustly stifle the managerial prerogative of the 1st respondent.
8. The order of this Court issued on 28th June, 2018 stated at paragraph 3 that the respondent's were thereby restrained from victimizing the Claimant's members in the respondent's employment including unprocedural termination, retrenchment and or redundancies. This order as rightly pointed by the respondent did not interdict the exercise of management discretion over the Claimant's members who were in the respondent's employment.
9. The Claimant's remained bound by their obligations under the employment including adherence to the respondent's human resource policies and control provided these were being invoked in good faith and were not used to intimidate or victimize them as a result of their union membership or activities. The right to strike or picket is fundamental labour right however the exercise of such right must be done peacefully and within confines of the law.

10. The respondent was therefore within its constitutional right to the protection and safety of its person and property to complain or report to the competent authorities when it felt these rights were about to be violated.

11. That having been said, the Court has perused in detail the claim and the Notice of Motion dated 8th May,2018 and the responses filed by the respondent and is of the view that the Labour dispute between the Claimant Union and the 1st respondent is delicate since it revolves around the question whether the transfer of undertaking from Alltex (EPZ) limited included the CBA and recognition agreement entered into between Alltex (EPZ) limited and the Claimant Union.

12. These are issues which for better industrial relations should be negotiated without threat of strike or contempt of Court orders.

13. The harmonious continuity of Industrial relations between the claimant union and Hela Intimates (EPZ) is for the benefit of both parties to the dispute. To this extent the Court will not issue the orders sought in the application 8th May,2018 summoning the MD of Hela Intimates (EPZ) Limited to appear and show cause why the Company has disobeyed or ignored the Court order dated 28th June, 2018.

14. The Court will instead refer this dispute for conciliation before the County Labour Office Machakos who shall attempt to resolve the same and report to Court within 60 days of this ruling.

15. The matter shall be mentioned before any Judge in Nairobi for further direction or recording or settlement if any.

16. Mention on 14th day of February, 2020 before any Judge in Nairobi.

17. It is so ordered.

Dated at Nairobi this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

Delivered this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge