



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1855 OF 2017

KELVIN SUYA ISUMBA.....1ST CLAIMANT

TIRUS MUTI MUCHIRI.....2ND CLAIMANT

SAMUEL MUSINDI LIKHODIO.....3RD CLAIMANT

VERSUS

METAL CROWNS LIMITED.....RESPONDENT

RULING

1. By a Notice of Motion brought under certificate of urgency dated 12th September 2017, the Claimants seek orders declaring their summary dismissal unlawful. The application, which is supported by an affidavit sworn by the 1st Claimant, Kelvin Isumba is based on the following grounds:

- a) That on 4th July 2017, the Respondent, through its Human Resource Manager, made a complaint at Industrial Area Police Station to the effect that the Claimants were found loading lorry registration number KAL 426S with cartons of generic gold crown that were not authorized;
- b) That on the same day, the Claimants were arrested and later released without any charge;
- c) That thereafter the Respondent declined to allow the Claimants back to work;
- d) That at a meeting held with the union officials, it was agreed that the Claimants would be allowed back to work but instead they were issued with show cause letters dated 5th August 2017 to which they duly responded;
- e) That the Claimants were dismissed on 10th August 2017;
- f) That the Respondent's action against the Claimants was in contravention of Sections 41,42,43,44 and 45 of the Employment Act.

2. The Respondent's response is contained in a replying affidavit sworn by its Human Resource Manager, Stephen Murithi on 29th September 2017. He states that the 1st and 3rd Claimants were employed by the Respondent as turn boys while the 2nd Claimant was employed as a delivery lorry driver.

3. Murithi depones that on 4th July 2017, the Claimants were caught stealing generic gold crowns by loading them onto lorry registration number KAL 426S. He adds that a replay of CCTV footages revealed that the Claimants had planned and executed a similar theft on 22nd June 2017.

4. The Respondent made a formal complaint against the Claimants at Industrial Area Police Station vide OB No. 33/04/07/2017. According to Murithi investigations into the theft are ongoing. He states that at a meeting held on 4th August 2017, with officials of Kenya Engineering Workers Union, the Respondent's management and the Claimants in attendance, it was agreed between the Union and the Respondent that the Claimants be issued with show cause letters.

5. The 3rd Claimant is said to have admitted having committed the offence of stealing alongside the 1st and 2nd Claimants. This led to the Claimants' dismissal upon which their final dues were tabulated.

6. By their application, the Claimants seek orders declaring their dismissal unlawful. This is also the gist of their main claim which is still pending before the Court. In my view, the orders sought, being final in nature cannot be granted at the interlocutory stage. They can only be granted after taking evidence from both sides in a full trial.

7. The application is therefore declined with costs in the cause.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF JANUARY 2018

LINNET NDOLO

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI

THIS 26TH DAY OF JANUARY 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Kelvin Suya Isumba (the 1st Claimant in person) Tirus Muti Muchiri (the 2nd Claimant in person) Samuel Musindi Likhodio (the 3rd Claimant in person) Mr. Aketch h/b for Mr. Kabue for the Respondent.