



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.918 OF 2016

KENYA UNION OF HAIR AND BEAUTY WORKERS CLAIMANT

VERSUS

STYLE INDUSTRIES LIMITED 1ST RESPONDENT

GODREJ CONSUMER PRODUCTS 2ND RESPONDENT

RULING

1. The claimant, Kenya Union of Hair and Beauty Workers filed application and Notice of Motion dated 13th June, 2017 and seeking for orders that;

1. Spent.

2. The court be pleased to find Mahmoud Saffideen, the Managing Director and

Margret Geno, Human Resources Head East Africa both of 1st respondent in contempt of the Orders of 7th April, 2017 by terminating employment of over 300 members of the union.

3. The said Managing Director and Human Resources Head be arrested and committed to prison for terms not exceeding six (6) months for disobeying court orders.

4. This court be pleased to order that the said Managing Director and Human Resources Head be not given audience by the court until they purge the contempt by reinstating all employees terminated on 31st May, 2017.

5. That the court be pleased to issue orders directed to the 1st respondent's Human Resources Head – East Africa compelling her to produce in court under oath certified copies of PAYROLLS print outs for the year 2015, 2016 and 2017 which is relevant to the disobedient of the contemnors.

6. This court be pleased to issue such other or further punitive orders in respect of the said contempt as may be necessary for the end of justice to be met.

2. The application is supported by the annexed affidavit of Ms Cecily Mwangi and on the grounds that after the court issued orders on 7th April, 2017 the respondent is in breach by victimising and intimidating members of the claimant contrary to articles 36 and 41 of the constitution, 2010. The respondents are in breach of sections 4, 5, 6 and 7 of the Labour Relations Act.

3. Other grounds in support of the application are that there was request for orders of production of the payrolls for the purpose of verification on how the terminated employees have been discriminated selectively and the nature of victimisation and intimidation resulting in unfair labour practices with the intention to disorganise the claimant union by reducing its members and thus avoid recognition.

That the method used has seen the 1st respondent terminating the employment of over 450 union members within a period of 4 months and have since been replaced by a similar number of new employees despite a defence there was a redundancy. Other 333 union members were dismissed in August, 2016 on account of being union members when the matter was filed in court and with the intention of reducing union member.

4. In the affidavit of Ms Mwangi who avers that as the General Secretary of the claimant union she moved the court and on 7th April, 2017 obtained orders restraining the respondent from intimidating, coercing, harassing, indulging in unfair labour practices and terminating or

dismissing the claimant members on account of unionisation. The respondents were served on 19th April, 2017 and an Affidavit of Service filed. The respondents have refused to obey the court orders served upon them despite a penal notice. The respondents have gone contrary to the orders of 31st May, 2017 and terminated 300 employees and members of the claimant under the pretext that they had fixed term contracts. The respondents have since recruited new employees. This has frustrated the recognition of the claimant by the respondent.

5. In reply, the respondents filed a Replying Affidavit sworn by Margaret Geno the Head Human Resources East Africa of the 1st respondent and who avers that the respondents have fully complied with the orders of 7th April, 2017 and the employees whose contracts lapsed were not terminated on account of their unionisation. Upon the expiry of their contracts, the respondent did not require additional labour due to reduced business. The respondent is faced with low business and hence a redundancy undertaken in compliance with section 40 of the Employment Act, 2007. The orders sought to commit respondent officers are thus without basis.

6. Ms Geno also avers that given a hearing, the respondent shall demonstrate to the court how the claimant union has made spirited efforts to disorganise its business operations through malicious claims. The respondents have no reasons for frustrating the claimant union by reducing its members as there is the right to associate and unionise under article 36 and 41 of the constitution, 2010. Where any employee has left the respondents' employment, such has been lawful and justified.

7. The orders sought with regard to the production of payrolls have no basis as the dispute between the parties does not require such records to be produced. The union members recruited by the claimant are not part of the respondents' records.

8. Both parties filed written submissions.

The court has put into account the written submissions by parties, the application and the reply thereto and the following issues emerge for determination; Whether the respondents are in disobedience of court orders of 7th April, 2017; Whether the respondents should be committed to contempt of court; Whether the respondents should be ordered to produce pay rolls for 2015, 2016, and 2017.

9. Court orders in their nature are to be obeyed. Once a court has issued an order, it is binding and the recipient must obey. If there is need to challenge the orders as issued, such a party must attend court to seek an explanation rather than defy it. In **Econet Wireless Kenya Ltd versus Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828** the court held as follows;

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.

10. The above position is reaffirmed by the Court of Appeal in the case of **Wildlife Lodges Ltd versus County Council of Narok and Another [2005] 2 EA 344** where the court held as follows;

... Where a party considers an ex parte order to cause him undue hardship, simple application will create an opportunity for an appropriate variation to be effected thereto; and therefore there will be no excuse for a party to disobey a court order merely on the grounds that it had been made ex parte and this argument will not avail either the first or the second defendant

11. In this case, on 7th April, 2017 the court issued orders as follows;

a) ...

b) *An order be and is hereby issued restraining the respondents from victimising, intimidating, coercing, harassing, indulging in unfair labour practice and terminating or dismissing the claimant's members all on account of their trade union membership.*

c) *The main suit be listed for hearing and determination on priority basis as it touches on Recognition of the Union which the respondent is exploiting to disorganise the union.*

d) *The main suit be served and it be responded to within 14 days.*

e) *The matter be mentioned for fixing of the hearing date on 8th May, 2017.*

12. On 8th May, 2017 the court directed that the main suit should proceed for hearing on 13th July, 2017.

13. Pending such hearing dates, on 13th June, 2017 the claimant filed the current application. The basis of such application is that the respondents are in contempt of court orders of 7th April, 2017. That on 31st May, 2017 the respondents terminated 300 employees and members of the claimant union.

14. The orders of 7th April, 2017 are specific to the extent that the respondents were restrained from *terminating or dismissing the claimant's members all on account of their trade union membership*. Noting the urgency of the issues set out, the court also directed that parties be allocated a hearing date on priority basis and gave a schedule and timelines to ensure the main claim was heard.

15. It is not in dispute that the respondents have now issued letters terminating employment to several employees on account of *redundancy*. In reply to the Notice of Motion, Ms Geno in the Replying Affidavit admit that indeed due to reduced business, the respondents were forced to terminate several employees whose contract had lapsed. They did not renew the expired contract.

16. The question then that the court must address is whether the order restraining the respondents from *terminating or dismissing the claimant's members all on account of their trade union membership* has been circumvented by the termination of employment on the grounds of *redundancy*. Regard must also be given to the nature of the main claim as filed by the claimant and the nature of orders sought. Is the question of *redundancy* part of such claim?

17. As noted by the court on 7th April, 2017 when issuing the interim orders, the court noted that the suit touches on recognition of the claimant by the respondent and to avoid the exploitation of the same to disorganise the claimant union, the main claim should be heard on a priority basis. Thus the issue of recognition of the claimant remains alive and urgent to the effective determination of matters between the parties herein.

18. Where the respondents were restrained from *terminating or dismissing the claimant's members all on account of their trade union membership* and have now terminated employees on account of redundancy, such are matter which must be interrogated by the court, the basis and rationale, the due compliance with the applicable law before the respondents can be said or found to have violated the orders issued on 7th April, 2017. To make a determination on the question of contempt of court orders on the basis that termination of employment is due a *redundancy* and not due to unionisation of claimant members would create tension and conflate issues and cloud them instead of addressing the core of the dispute, which is the recognition of the claimant by the respondent.

19. Noting the above, the question of committal of the respondents to jail for disobedience of impugned orders does not arise. By addressing the main claim, all issues between the parties shall be conclusively addressed.

20. The orders seeking for the reinstatement of the employee now terminated from their employment cannot issue in the interim until the main claim is heard and determined. This will enable the court delve into the evidence, the main claim and the nature of orders sought by the claimant. The cause of action forming the basis of the claim as filed in 2016 and the reasons for termination of employees on 31st May, 2017 must be gone into on their merits. Such cannot be determined at this stage by affidavits. There is need to call for evidence.

21. With regard to production of the payrolls, section 10(6) of the Employment Act, 2007 requires an employer, once suit such as this has been filed to file all work records with regards to matters addressed by the employees. In this case, the claimant being the representative union for the employees, the orders sought with regard to production of payrolls by the respondent should be premised on section 10 of the Act.

22. However, in this suit the question of recognition of the claimant is in issue. Before such a matter is addressed in the affirmative, to produce work records for the respondents employees to the claimant union without any recognition would amount to a third party getting crucial records of the respondent without the informed consent of its employees by having their trade union of choice being recognised for the purpose of engaging with the respondent on their behalf. Ultimately, by the court hearing the main suit, such matter shall be resolved.

23. Where the claimant has recruited members from the respondents' employees, check off forms can attest to this fact. The production of the payroll or the failure to produce it would not change the fact of recruitment. The claimant should assert its case in seeking recognition by setting out how many members in the respondents' employment they have recruited.

24. The claimant also retains the right to apply for the respondent to produce documents. Such is a procedure allowed under the Rules. Such can follow without conflating issues as herein. On its merits such an application can be addressed. Rule 20(3) of the Employment and Labour Relations Court (Procedure) Rules, 2016 shall suffice to address this issue for the claimant.

Accordingly, application dated 13th June, 2017 is declined. Costs in the cause.

Read in open court at Nairobi this 20th day of April, 2018.

M. MBARU JUDGE

In the presence of:

Court Assistant:.....

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