



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1619 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 29th May, 2018)

BANKING, INSURANCE AND

FINANCE UNION (KENYA).....CLAIMANT/APPLICANT

VERSUS

KCB (KENYA) LIMITED.....RESPONDENT

RULING

1. The Application before Court is one dated 25th January 2018 brought under Sections 12, 12(2), 12(3) (viii) and 20 of the Employment and Labour Relations Court Act, Rules 9, 17 and 17 (7) of the Employment and Labour Relations Court (Procedure) Rules, 2016 and all other enabling provisions of law seeking orders:

a. That this Honourable Court be pleased to certify this matter as urgent and that service of the application be dispensed with in the first instance.

b. That the Intended Interested Parties, the Applicants herein, be joined in this suit as Interested Parties.

c. That pending the hearing and determination of this Application, this Honourable Court be pleased to grant a temporary order setting aside the Order of the Court issued on 18th August 2017 and confirmed on 21st September 2017 wherein the Honourable Court ordered;

“That interim orders be and are hereby granted restraining the Respondent herein from terminating or attempting to terminate any unionisable employee on the basis of the quarterly performance management reviews based on the bank’s balanced score card and to stop any such unprocedural and unlawful balance score card appraisal.

d. That pending inter parte hearing and determination of this application, this Honourable Court be pleased to grant a temporary order setting aside in part, the order of the Court issued on 18th August 2017 and confirmed on 21st September 2017.

e. That upon inter parties hearing of this application, this Honourable Court be pleased to set aside the Order of the Court issued on 18th August and confirmed on 21st September 2017.

f. That upon inter parties hearing of this application, this Honourable Court be pleased to set aside, in part, the Order of the Court issued on 18th august 2017 and confirmed on 21st September 2017.

g. That this Honourable Court be pleased to make such other and or further orders as are necessary to meet the ends of justice with respect to this application.

h. That the costs of this application be in cause.

2. This application is supported by the affidavit of one Dishon Ochieng and is premised on grounds:

1. That the Intended Interested Parties are unionisable employees of the Respondent and members of the Claimant union.

2. That the Claimant herein successfully sought orders from the Honourable Court on 18th August 2017 and confirmed the same on 21st September 2017 without due consultation and authority of the Intended Interested Parties and majority membership of the Claimant through the laid down governance structure of the Claimant union and the said orders are adverse to the interests of the Intended Interested Parties and other members and has prejudiced them.

3. That the Respondent has, as required in law, compiled with the subject Court Order thereby denying the Interested Parties an opportunity to undergo a performance management review and consequently to be awarded bonus pay and related benefits arising there from as has been the case since 2005.

4. That the Intended Interested Parties are aggrieved by failure to be subjected to performance management review which has caused them to miss out on the consequential bonuses and attendant benefits for the year 2017. Further that the Respondent is a large financial institution with large work force that requires ample time for success

3. The Application was not opposed by the Respondents.

4. The Applicant/Claimants opposed this application stating that the Intended Interested Parties ceded their authority to be represented by them and cannot now come to Court alleging otherwise. They aver that they have acted according to the Interested Parties wishes.

5. I have examined the averments of both parties. The Interested Parties are yet to be enjoined in this Claim and hence lack locus to seek orders they seek save for being enjoined. In the circumstances, the orders sought cannot be granted in a bracket form.

6. However, bearing in mind that the Intended Interested Parties have freedom of association under Article 41 of the Constitution, they also have a choice to decide when their Union is acting for them or not.

7. In the circumstances, their prayer to be enjoined is allowed. They are free to file their pleadings and participate in this claim in its entirety.

8. Costs in the cause.

Dated and delivered in open Court this 29th day of May, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Odero for Claimant/Applicant – Present

Nyambura holding brief for Oduol for Intended Interested Parties – Present