



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 296 OF 2013

TRANSPORT WORKERS UNION.....CLAIMANT

VERSUS

GLORY DRIVING SCHOOL.....RESPONDENT

RULING

1. The Transport Workers Union (Union) instituted legal proceedings against Glory Driving School on 7 March 2013 and the Issues in Dispute were stated as

1. Unfair redundancy of 44 employees who are the Claimant Union members.
2. Underpayment of the employees' statutory monthly minimum wages contrary to section 48 of the Labour Institutions Act, 2007, the Regulation of Wages Order effective 1 May 2011/12 and clause No. 2 & 31 of the parties CBA.
3. Intimidation and threats to the Claimant members.

2. On 26 September 2017, the Cause was scheduled for hearing on 5 April 2018, and the Union was directed to serve a hearing notice.

3. When the Cause came up for hearing on 5 April 2018, Ms. Fundi for the Union sought an adjournment on the ground that she had not been able to trace her witnesses.

4. The Respondent was not in Court, and the Court has not been able to find any evidence that a hearing notice was served as directed by the Deputy Registrar on 26 September 2017.

5. After perusing the record, the Court declined to allow the adjournment and ultimately the Court dismissed the Cause prompting the Union to move the Court on 20 April 2018 seeking orders

1. ...

2. The Honourable Court be pleased to review and set aside the order (of the Honourable Justice Stephen Radido) made on the 5th April, 2018 dismissing the suit herein.

3. The costs of the application be in the cause.

4. Any other order as the Honourable Court may deem fit and just.

6. The Respondent's Administrator filed a replying affidavit in opposition to the application and the Court heard addresses from the parties on 26 June 2018.

7. In support of the application, the Union's advocate contended that she was not aware that the witnesses she had been expecting were in Court as she had not been able to trace them; that she was not able to identify the witnesses as she did not know them; that the Union had been requested to secure attendance of witnesses but was unable to reach them; that the Union and the grievants/witnesses had a fallout and that the Respondent would not be prejudiced.

8. In opposing the application, the Respondent contended that the depositions in support of the application were speculative; that the Union

did not serve a hearing notice as directed by the Deputy Registrar on 26 September 2017 and that there had been inordinate delay in filing the application.

9. The application under examination was filed within 10 days of the dismissal order and the Court has no reasons to find that as constituting inordinate delay.

10. It is true that when the Union's advocate was applying for adjournment, some people in Court attempted to get the attention of the Court. It is probable they were the Grievants.

11. However, the Court notes that there is no evidence on record that the Union had notified the Respondent of the hearing notice as directed by the Deputy Registrar on 26 September 2017.

12. One of the cardinal characteristics of natural justice in an adversarial system is notifying the other side of a hearing date when one has been fixed in their absence.

13. Therefore, in all fairness, the hearing could not have proceeded on 5 April 2018 because the Union had not served a hearing notice as directed by the Deputy Registrar.

14. It is glaring that the Union did not respond to the assertion by the Respondent that a hearing notice was not served. It cannot be deciphered therefore whether the Union's application for adjournment was made in good faith when a hearing notice had not been served and no such disclosure was made on 5 April 2018.

15. The Court will however allow the application on condition that the Union's advocate on record pays to the Respondent costs of Kshs 15,000/- within 15 days from today.

16. In default, the Cause to stand dismissed.

Delivered, dated and signed in Nairobi on this 26th day of October 2018.

Radido Stephen

Judge

Appearances

For Union Ms. Fundi instructed by Rachier Amollo Advocates LLP

For Respondent Ms. Ochieng instructed by Morara Apiemi & Nyangito Advocates

Court Assistant Lindsey