



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NUMBER 422 OF 2016**

**BETWEEN**

**ALMAGAMATED UNION OF KENYA**

**METAL WORKERS.....CLAIMANT**

**VERSUS**

**M/S AUTOMARINE SERVICES.....RESPONDENT**

**RULING**

1. The Claimant Union filed a Statement of Claim dated 27<sup>th</sup> May 2016, seeking orders: that the Respondent is ordered to implement CBA forthwith and pay Employees all accrued benefits; arrears of salary are paid on compound interest; the Court imposes a fine on the Respondent under Section 82 of the Labour Relations Act; the Respondent to meet the costs of the Claim; and any other suitable relief.
2. In an Application dated 8<sup>th</sup> July 2016, the Claimant seeks a temporary injunction barring the Respondent from terminating Claimant's members' contracts of employment on account of redundancy; the Respondent deposits in Court Claimant's Members' dues, calculated at Kshs. 1,792,394; or the Respondent's Director is ordered to deposit his passport in Court; the Claimant is allowed to amend its Statement of Claim; the Respondent is barred from changing its name; and the Claimant is granted any other suitable provisional measure.
3. Parties agreed in Court on 11<sup>th</sup> July 2016, to allow the prayer barring the Respondent from terminating the contracts of employment of its Employees, pending hearing and determination of the Claim, or pending settlement at their own level.
4. On 10<sup>th</sup> October 2016, they agreed further to have the remainder of the Application considered and determined on the basis of their Submissions. They confirmed the filing of their submissions at the last mention, on 23<sup>rd</sup> November 2016.

***The Court Finds and Orders:-***

- a) There is no need to order the Respondent to deposit Kshs. 1,792,394 in Court, or order Respondent's Director to deposit his passport with the Court. The Parties have, quite sensibly, agreed to have the affected Employees to continue working pending hearing and determination of the Claim.

b) There is no need to order the Respondent is barred from changing its name. Change of business name is entirely a prerogative of the business owner. So long as it does not interfere with the Employees' contracts, it is a prerogative the Court should not stifle. The Parties have agreed Employees continue to work. It should not concern the Claimant, which business name, the Respondent operates under.

c) Parties have the liberty to amend their Pleadings, so long as amendment is done without delay, and without prejudice to their Counterparts. As the Claim herein is still in its infancy, relatively so, there is no reason why the Claimant should not be allowed to amend. The prayer for amendment is allowed.

d) Parties shall Move the Court for other orders.

e) Costs in the Cause.

***IN SUM, IT IS ORDERED:-***

***i. The prayer for deposit of Kshs. 1,792,394, or that Respondent's Director deposits his passport, with the Court is declined.***

***ii. The prayer for injunction barring the Respondent from changing its name is declined.***

***iii. The Claimant shall file and serve amended Statement of Claim within 14 days of this Ruling.***

***iv. Parties shall move the Court for further orders.***

***v. Costs in the Cause.***

Dated and delivered at Mombasa this 17<sup>th</sup> day of February, 2017.

James Rika

Judge