



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 639 OF 2016

BETWEEN

DOCK WORKERS UNION.....CLAIMANT

VERSUS

M/S ASSOCIATED VEHICLE

ASSEMBLERS LIMITEDRESPONDENT

AND

AMALGAMATED UNION OF KENYA

METAL WORKERS.....INTERESTED PARTY

RULING

1. In Miscellaneous Application No. 19 of 2016 involving all the Parties herein, it was ruled that the Dock Workers' Union's intervention, in the redundancy process involving Associated Vehicle Assemblers Limited, its Employees, and the Amalgamated Union of Kenya Metal Workers, was premature.
2. This was based on the fact that Associated Vehicle Assemblers Limited and Amalgamated Union of Kenya Workers, have a Recognition Agreement, and have concluded a CBA. Redundancy process was undertaken under this framework.
3. The Ruling in Miscellaneous Application No. 19 of 2016 was delivered on 18th July 2016.
4. On 1st September 2016, the Dock Workers' Union filed a fresh Application under Cause No. 639 of 2016, seeking to have Associated Vehicle Assemblers restrained from '*proceeding with further redundancy.*'
5. The Application was argued on the 14th February 2017.

The Court Finds

6. The current Application, regrettably, raises similar factual and legal issues, as the Miscellaneous Application. The Court expressed its opinion previously, and nothing appears to have changed to justify a change in that opinion.

7. All the Dock Workers' Union has done differently in the current Application, is to argue that the Kenya Vehicle Manufacturers Association, who signed the Recognition Agreement with Amalgamated Union of Kenya Metal Workers, was not registered under the Trade Unions Act Cap 233 the Laws of Kenya. It was not an Association capable of executing a Recognition Agreement. It was registered under the Societies Act Cap 108. The Association was therefore not capable of entering into any valid labour contract. The Recognition Agreement and CBA concluded through the Association, have no legal validity.

8. These Submissions do not change the opinion of the Court. The Dock Workers' Union would have to initiate action directly challenging the existing Recognition Agreement and CBA. It is not proper for the Court to declare these instruments are invalid, and of no legal effect, while no action has been brought, and Parties heard on the validity of the instruments in question.

9. The Association, as understood by the Court, has represented many other Members in the industry. Declaring that the Association has done so illegally, without hearing the Association, and its Members, would be the wrong thing to do.

10. The Dock Workers' Union needs to follow the path suggested by the Court in its previous Ruling.

IT IS ORDERED:-

a) The Application dated 1st September 2016 is declined.

b) No order on the costs.

Dated and delivered at Mombasa this 24th day of March 2017.

James Rika

Judge