



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 2181 OF 2014
TRAILINK GROUP LIMITED CLAIMANT
VERSUS
KENYA LONG DISTANCE TRUCK DRIVERS
AND ALLIED WORKERS UNION RESPONDENT

Mr. Chigiti for claimant

Mr. F. N. Kimani for respondent

JUDGMENT

1. The claimant brought this suit vide a memorandum of claim dated 5th December 2014 seeking for orders;

- (i) Declaration the strike notice dated 20th November, 2014 is illegal, null and void.
- (ii) An injunction do issue restraining the Respondents, its employees, servants and or agents from carrying on with the intended strike.
- (iii) An injunction do issue restraining the Claimant's employees from participating in the intended strike.
- (iv) Any further relief that this Honourable Court may deem fit to grant.

2. The respondent responds to the memorandum of claim denying all the particulars of claim and in addition has included a counter claim in which it seeks the following prayers;

- (1.) An order compelling the claimant to honour the Recognition Agreement and Return To Work Agreement signed on 15th December 2014.
- (2.) An order compelling the claimant to cease from dismissing, victimizing, threatening or inciting workers against the union.
- (3.) An order be issued directing the claimant to allow all the workers free and unconditional ingress to their respective places of work without intimidation.

(4.) An order be issued to declare the lock-out by the claimant against the workers/members of the respondent to be unlawful and unprotected.

(5.) An order directing claimant to pay the respondent/workers all the pending emoluments including salaries, overtime pay and any other allowances.

(6.) An order to declare the purported report by R. J. Twanga null and void and of no effect.

(7.) An order directing the claimant in the alternative to prayers 3 and 6 above to pay the workers/union members 12 months' salary for wrongful termination.

3. The parties have filed written submissions on 25th January 2017 and 30th January 2017 respectively.

4. The issues for determination are as follows;

(i) Whether the respondent called unprotected strike or the claimant locked the members of the respondent out.

(ii) Whether the claimant lawfully signed a Recognition Agreement and a Return To Work Formula and is bound by the same.

(iii) Whether the members of the claimants are entitled to reinstatement or compensation for unlawful dismissal of the employment.

(iv) Any other reliefs either party may be entitled to.

Issue I - IV

5. The claimant relies on the statement of claim and list of documents attached to the affidavits and also called CW1 Peter Njenga, the Human Resource Manager of the respondent.

6. CW1 told the court that the claimant is involved in commercial transport and has a large fleet of long distance trucks and 270 employees.

7. That the employees involved in this suit are not part of the 270 employees. That the parties had a dispute on recognition.

8. The claimant disputed the authenticity of check-list presented by the respondent union for purposes of recognition in that it included former employees, unsigned names, double entries and employees not on the payroll. That there were 53 employees with anomalies in the list.

9. That the respondent union issued a strike notice dated 20th November 2014 to the managing Director. The strike was to commence on 1st December 2014, if recognition was not granted, union dues deducted and payment of mileage allowance to drivers.

10. The respondent's Secretary General Mr. Mbugua, withdrew the strike notice by a letter dated 27/11/2014, however, on 8th December 2014, claimant noticed via the GRS system that all trucks were stationary along all the routes of operation including those plying Mombasa, Nairobi, Banana, Tororo route.

11. The standstill continued until the 15th December 2014. The GRS tracking system report was produced in court to show that the trucks did not move during this period.

12. CW1 told the court that the claimant suffered immense losses during the period and clients were threatening to withdraw the contracts of service between them and the claimant.

13. The claimant reported the matter to the Ministry of Labour but on 8th December 2014, the claimant came to court seeking injunctive relief, which relief was granted. The court order was served on the Secretary General of the respondent, Mr. Nicholas Mbugua on 10th December 2015 and notices were written to all employees asking them to report to work by 11 a.m. on 8th December. A second notice was posted requesting employees to resume work by 2 p.m.
14. On 9th December 2014, the claimant issued a notice stating that the strike was illegal and terminated the services of the employees on strike. The notices were produced by CW1.
15. The claimant sought the intervention of police at Voi and Maungu police posts and did conciliation on telephone with union officials. The strike continued.
16. On 15th December 2014, the union officials came to the office for a meeting.
17. The claimant re-employed old employees and employed new ones totaling 47 in January 2015. The sacked employees were paid terminal benefits on 24th December 2014.
18. A conciliator Mr. Twanga was appointed on 21st November 2014 to address issue of recognition. Later on a second conciliator Mr. Mwanzia was appointed on 31st December 2014 on the issue of recognition and dismissal of employees who made a recommendation that the former employees be reinstated.
19. On 15th December 2014, the managing director of the claimant and Mr. Nicholas Mbugua, concluded a Recognition Agreement which was presented to court.
20. The claimant later renounced the Recognition Agreement and declined to implement it stating that the same was concluded under threat.
21. The claimant submits that the termination of employees was lawful since they had participated in an illegal strike and the court should allow the suit with costs and dismiss the counter claim.
22. CW2, was the Managing Director of the claimant, Mr. Pritpal Singh Kalsi. He supported the evidence of CW1 in all material respects to the effect that the employees of the respondent engaged in unprotected strike. That the claimant terminated their employment once they failed to heed two notices to return to work. That he was forced to sign a Recognition Agreement with the Secretary General of the respondent Mr. Nicholas Mbugua to save the business which was under threat of collapse due to the unlawful strike.
23. RW2 denied threatening or harassing the employees and or locking them out. That the Labour office and the claimant instead pleaded with the employees to return to work in vain.
24. That on 15th December 2014, he met Mr. Mbugua and signed the Recognition Agreement on the basis that the union had recruited 195 employees under duress since customers were threatening to withdraw business from the claimant and sue the company. That later on he revoked the Recognition Agreement and Return To Work Formula that had allowed all employees who had participated in the strike to return to work.
25. RW2 denounced the counter claim and the report of Mr. Twaga stating that the same was null and void. CW2 said he had 200 – 300 workers and was not ready to recognize the union.
26. RW1 was Mr. Nicholas Mbugua, the Secretary General of the respondent. RW1 told the court that the union had recruited 195 drivers in the employment of the claimant as its members.
27. In the letter dated 29th October 2014, RW1 informed the claimant that it had recruited 179 members and later recruited 25 and 3 further members making a total of 195 members as of 29th October 2014.

28. RW1 prepared a draft recognition agreement to be signed on 20th November 2014 on 20th November 2014, the claimant refused Mr. Mbugua to enter the factory at Athi River.
29. RW1 wrote a strike notice for refusal to recognise the union and deduct union dues and payment of mileage allowance to drivers.
30. On 21st November 2014, the notice was served on the respondent and Ministry of Labour. A conciliation meeting was organized on 21st November 2014, and RW1 wrote a letter to cancel the strike on the same date. RW1 states that the strike did not proceed as scheduled and the meeting scheduled for 21st November 2014 did not take place. The claimant requested the meeting to take place on 3rd December 2014 and it took place.
31. The claimant denounced the check-off list at the meeting and thereafter the claimant started sacking drivers especially those who had joined the union and those involved in the recruitment drive. List of dismissed drivers were produced by RW1 on various dates.
32. As a result of harassment, including summary dismissals, the employees downed their tools on 9th December 2014. This was notwithstanding the notice issued by RW1 calling off the strike.
33. RW1 told the court the strike was provoked wholly by the unlawful conduct of the claimant and was not called by the respondent. This suit was filed on 8th December 2014 a day before the strike.
34. RW1 stated that the CW2 called him by telephone, on 15th December 2014 and a friendly meeting was held, including sharing a cup of tea, pursuant to which a Return To Work Formula and Recognition Agreement were signed.
35. CW2, beseeched RW1 to get the employees back to work.
36. The Return To Work Formula and the Recognition Agreement were produced as evidence before court.
37. RW1 denounced the report by Mr. Twanga which said the union did not have a simple majority dated 15th December 2014. RW1 said this was not a genuine report. Mr. Twanga acted without authority.
38. On 16th December 2015, the employees returned to work, according to RW1 but were locked out at the gate and chased by the police. Mr. Mwanzia was appointed by the Ministry for Labour to conciliate the dispute. Mr. Mwanzia recommended that the employees be allowed to resume work without victimization or loss of benefits.
39. RW1 concludes that the Return To Work Formula and Recognition Agreement were signed feely and voluntarily and same be enforced by the court.
40. The court has carefully considered the competing evidence by CW1, CW2 and RW1 and has come to the following conclusions of fact and law;
41. The respondent had recruited 195 employees out of approximately 270 employees of the claimant as at 29th October 2014.
42. That this constituted more than a simple majority of all unionisable employees of the claimant.
43. That in terms of Section 54(1) of the Labour Relations Act, 2007 the claimant was under a legal obligation to recognize the respondent union by signing the draft recognition agreement but was locked out by the claimant, and this was the genesis of the labour dispute that was reported to the Minister for Labour on 21st November 2014.

44. That the dispute was not resolved at a meeting held on 3rd December 2014 and the court is satisfied that the claimant embarked on a victimization exercise of union members leading to the unprotected strike on 9th December 2014 in spite RW1 having withdrawn a strike notice he had issued on 21st November 2014. The strike was called off the same day to allow conciliation by the Minister to resolve the dispute. The court further finds that on 15th December 2014, CW2 representing the claimant and RW1 on behalf of the respondent signed freely and voluntarily a Return To Work Formula and a Recognition Agreement to allow employees who had been victimized and those that had embarked on unprotected strike to go back to work without loss of benefits and / or victimization by 16th December 2014.

a) The court finds as a fact, that the claimant against the letter and the spirit of the Return To Work Formula locked out employees upon their return-to-work on 16th December 2014, having slowly replaced the workers upon securing a court injunction on 8th December 2014 from this court.

b) The Return To Work Formula, is a bidding document that has been instrumental in resolving majority of Industrial dispute in this country and the courts have at all times endeavored to enforce the instrument as a corner stone of Industrial peace in Kenya. The court having perused the said Return To Work Formula holds that the same bound the claimant to allow all the drivers to return to work, without any victimization, including any loss of benefits. The said document superseded any unilateral letters that had hitherto been issued to sack the employees who had embarked on unprotected strike.

c) Accordingly, all the employees who lost their employment due to the disregard of the Return To Work Formula, lost their jobs unlawfully and are entitled to compensation under section 49 of the Employment Act. The court would not consider reinstating the drivers, there being evidence that they had been replaced and they had contributed to their dismissal having embarked on an unprotected strike and failed to heed on time, notices to return to work, until the Return To Work Formula had been signed.

d) The court awards each of the sacked drivers eight (8) months' salary as compensation for the wrongful dismissal.

e) With regard to the Recognition Agreement, there is no doubt that the respondent had attained more than 50 + 1 of all the unionsable employees of the clamant. The claimant had signed a Recognition Agreement with the respondent union. The claimant is estopped from revoking the same for want of justification.

f) The claimant to compute, file and pay the dismissed employees all terminal benefits due within 30 days.

45. The court upholds the Recognition Agreement signed by the parties on 15th December 2014 and directs the claimant to commence deducting from the salary of all union members, union dues and remit to the respondent forthwith.

46. The claimant to file within 30 days the compensation payable with respect of all the employees dismissed by the claimant between the 20th November 2014 and 16th November 2014 for joining the union and for participating in unprotected strike, covered by the Return To Work Formula signed on 15th December 2014 within thirty (30) days.

47. The claimant at liberty to file a response to the computation within fourteen (14) days of service.

The final orders of the court are as follows;

a) The dismissal of the grievants was wrongful and in violation of the Return To Work Formula. All the grievants dismissed between the 21st November 2014 and 16th December 2014 be paid

equivalent of eight (8) months' salary as compensation. The respondent to file computation of compensation within thirty (30) days and claimant to file a reply within 14 days if any for consideration and approval by the court.

b) The claimant to compute all terminal benefits due to the dismissed employees, file and pay within 30 days.

c) The claimant is directed to recognize the respondent forthwith in terms of the Recognition Agreement signed on 15th December 2014 by the parties.

d) Compensation is payable with interest at court rates from date of Judgment till payment in full.

e) Claimant to pay the costs of the suit.

Dated and delivered at Nairobi on this 26th day of May 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE