



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 694 OF 2017

NIMROD MASIKA.....1ST CLAIMANT
VINCENT BUSHA.....2ND CLAIMANT
DENNIS RATEMO.....3RD CLAIMANT
FRANCIS KABUI.....4TH CLAIMANT
PATRICK KINGOO.....5TH CLAIMANT
NAFTAL ORIASO.....6TH CLAIMANT
PETER ORINA.....7TH CLAIMANT
PAUL WAITHAKA.....8TH CLAIMANT
SAMIU HASAN.....9TH CLAIMANT
SAMWEL MWACHAKA.....10TH CLAIMANT
JOHN GAKUO.....11TH CLAIMANT
JOHN MURIUKI.....12TH CLAIMANT
PASIRIO IRERI.....13TH CLAIMANT
SIMON NDERITU.....14TH CLAIMANT
STEWART ONYURO.....15TH CLAIMANT
JARED ONDARA.....16TH CLAIMANT
CALVIN NYANAMBA.....17TH CLAIMANT
GEOFFREY KADENGE.....18TH CLAIMANT
ROBERT ATURA.....19TH CLAIMANT

PATRICK INYANJE.....20TH CLAIMANT
VINCENT MULWA.....21ST CLAIMANT
PETER NGURU.....22ND CLAIMANT
BONIFACE MUNAYO.....23RD CLAIMANT
MAXWELL WANYIRI.....24TH CLAIMANT
FREDRICK MUKHWANA.....25TH CLAIMANT
PETER GITONGA.....26TH CLAIMANT
KENNEDY MUSUNDI.....27TH CLAIMANT

VERSUS

CROWN BEVERAGES LIMITED.....RESPONDENT

RULING

1. The Claimants' application brought by Notice of Motion dated 11th April 2017 and filed in Court on even date seeks the following orders:

- a) An order restraining the Respondent from forcing the Claimants into signing new agreements;
- b) An order restraining the Respondent from interfering with the Claimants' terms of employment;
- c) An order directing the Respondent not to discriminate and/or victimize the Claimants;
- d) An order directing the Respondent to pay each of the Claimants house allowance from the respective dates of employment;
- e) An order compelling the Respondent to stop the mass transfer of its employees to Molo and Mombasa.

2. The application which is supported by an affidavit sworn by the 1st Claimant, Nimrod Masika on 11th April 2011 is premised on the following grounds:

- a) Vide letters dated 7th December 2016, the Claimants were redeployed to new premises in Embakasi;
- b) The Claimants however noticed that they were operating under premises owned by Nairobi Coca-Cola Bottlers;
- c) The Claimants were given documents to fill and sign which in essence amounted to new contracts of employment by Nairobi Coca-Cola Bottlers;
- d) Despite the Claimants' request for an explanation, they were subjected to constant pressure, intimidation and threats in a bid to have them accept the unilateral alteration of their contracts of employment;
- e) The Claimants were addressed by the Integration Manager of the Respondent who told them that

there would be mass transfers that were likely to affect most of the Claimants;

f) The Respondent's actions amount to victimization of the Claimants;

g) The Claimants are aggrieved by the Respondent's actions and stand to suffer an injustice unless the orders sought are granted;

h) It is in the interest of justice that the application is allowed.

3. The Respondent's response is contained in a replying affidavit sworn by its Integration Manager, Andrew Musingo on 10th May 2017. Musingo depones that the Claimants serve in various capacities as drivers and delivery representatives in the Respondent's Warehousing and Distribution Department.

4. He further depones that prior to July 2016 the Respondent was a subsidiary of SAB Miller PLC, distributing both beer and *Keringet* mineral water in Kenya. In July 2016 SAB Miller and Coca-Cola Sabco PLC merged their non-alcoholic beverage operations to form a new entity known as Coca-Cola Beverages Africa. The Respondent became a subsidiary of Coca-Cola Beverages Africa with its mineral water brand *Keringet* becoming a brand of the Coca-Cola Company to be distributed through the Coca-Cola franchise bottling companies in Kenya.

5. As a result of the merger into Coca-Cola Beverages Africa, the Respondent had to split and separate the beer business to a new entity Kenbev Ltd with its head office operations remaining in Ruiru. In December 2016, the Respondent leased a new warehouse facility to temporarily relocate its operations from Ruiru effective 1st January 2017.

6. Having become a subsidiary of Coca-Cola Beverages Africa, the Respondent embarked on a process of integration and upgrading of its facilities and processes to meet the Coca-Cola operating requirements, including an update of employee details. In order to achieve this objective, the Respondent issued the Claimants with hiring input forms requiring them to update their personal details.

7. Musingo states that the hiring input forms are merely data collection forms and do not contain any offers of employment, terms and conditions of service or even the name of another company. The allegation by the Claimants that these forms are new contracts of employment is therefore false.

8. Musingo adds that the Respondent was in the process of reconfiguring its distribution model to enable it serve more customers through the Coca-Cola distribution network. This would eventually result in the need to re-deploy warehousing and distribution staff from Embakasi to Molo based on operational needs and business requirements.

9. The Claimants seek conservatory orders in this application and as restated by **Musinga J** (as he then was) in *Centre for Rights Education (CREAW) & 7 others v Attorney General [2011] eKLR*, a party seeking such an order must demonstrate a *prima facie* case with a likelihood of success.

10. The Claimants' complaints are that they are being forced to sign new contracts of employment and are threatened with unwarranted transfers. I have looked at the hiring input form in issue and find nothing therein that suggests issuance of new employment contracts to the Claimants.

11. Further, the Court considered the detailed account given by the Respondent's Integration Manager, Andrew Musingo in his affidavit sworn on 10th May 2017 on the Respondent's business remodeling and operational repositioning. On this score, the Court found that the steps taken by the Respondent, including operational relocation and staff transfers, were within its mandate as an enterprise and found no basis for the allegations of victimization and intimidation made by the Claimants.

12. Regarding the prayer on house allowance, Counsel for the Claimants agreed in oral submissions that this is a matter to be determined at the main hearing.

13. Overall, I find the Claimants' application unmeritorious and proceed to dismiss it with costs in the cause. The interim orders granted on 12th April 2017 are vacated.

14. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30TH DAY OF JUNE 2017

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JUDGE

Appearance:

Mr. Okatch for the Claimants

Miss Oyombe for the Respondent