



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1558 OF 2017

KENYA POST OFFICE SAVINGS BANK.....CLAIMANT

VERSUS

JOAN MUTHUIYA.....1ST RESPONDENT

BANKING INSURANCE AND

FINANCE UNION (KENYA).....2ND RESPONDENT

RULING

1. The Claimant's application brought by Notice of Motion dated 4th August 2017 seeks an order of injunction restraining the Respondents and employees of the Claimant forming the membership of the 2nd Respondent from proceeding on strike and other related actions of withdrawal of labour pursuant to strike notice issued on 14th July 2017.

2. The application which is supported by the affidavit of the Claimant's Human Resources and Administration Manager, Thomas K. Bett is based on the following grounds:

- a) That the Claimant has a Recognition Agreement with the 2nd Respondent
- b) That the Claimant has been in negotiations with the 2nd Respondent, on salary increment for unionisable employees, in which the 1st Claimant, who is the Chief Shop Steward, has participated;
- c) That pursuant to a judgment delivered by this Court in ***BIFU v Kenya Post Office Savings Bank (ELRC No 2029 of 2015)*** the Claimant made efforts to obtain approval of proposed terms of a Collective Bargaining Agreement (CBA) from the Salaries and Remuneration Commission (SRC) and the National Treasury which is the Claimant's parent ministry;
- d) That the Respondents have called a strike vide strike notice dated 14th July 2017 without adhering to the Labour Relations Act and the Recognition Agreement;
- e) That upon receipt of the strike notice, the Claimant engaged the Respondents in meetings on 19th and 25th July 2017 and also accompanied them to meetings with the National Treasury and SRC with a view to finding a solution to the matter;
- f) That there is in place an order of this Court in ***ELRC Cause No 2029 of 2015***, requiring the parties herein to engage in fresh negotiations in line with the guidelines issued by SRC;

- g) That the threatened strike has not been preceded by any conciliation or adjudication as required by the Recognition Agreement and the Labour Relations Act;
- h) That the strike notice is issued in bad faith to arm twist and place the Claimant under economic duress;
- i) That the Claimant is ready and willing to continue with the process of approved negotiations for a proposed new CBA as directed by the Court;
- j) That if the threatened strike is allowed to proceed, the Claimant's customers, constituting over 30,000 pensioners and 98 branches spread over 45 counties shall be disrupted thereby threatening the continued business of the Claimant;
- k) That the threatened strike shall cause irreparable loss and damage to the Claimant's business and reputation and could cause a run on the Claimant Bank;
- l) That unless the interim orders are granted, the Respondents and the Claimant's unionisable employees shall proceed on strike.

3. The Respondents filed grounds of opposition on 21st August 2017 stating as follows:

- a) That the application is technically defective for misjoinder of parties. The 1st Respondent is a stranger to the suit and she is unfairly being dragged into this matter. She is not the right party to be sued as she is a workers' representative and her joinder can only be construed as an act of intimidation and harassment. The strike notice was issued by the 2nd Respondent and it is the right party to be sued, not its members;
- b) That the parties have a valid Recognition Agreement signed on 22nd October 2003 and have negotiated several collective bargaining agreements, the last one having expired on 30th June 2013. The 2nd Respondent forwarded CBA proposals to the Claimant on 14th March 2014. The 2nd Respondent reported a trade dispute on 23rd October 2014, after the Claimant had failed to give a counter proposal. The Claimant subsequently gave its counter proposal on 18th November 2014. The parties met and agreed on a 5% basic salary increment for 2013/2014 and 2014/2015, among other things ;
- c) That following the judgment by the Court in ***ELRC Cause No 2029 of 2015***, which nullified the agreement by the parties and directed fresh negotiations, the parties met and agreed on increment of basic salary at 5% for 2013/2014 and 2014/2015 and 3% for 2015/2016. There would be no increment for 2016/2017;
- d) That the 2nd Respondent issued a strike notice on 14th July 2017, after the Claimant failed to conclude the matter. The 2nd Respondent believes that the Claimant had taken into account the guidelines issued by SRC;
- e) That the Claimant was well aware of a meeting convened by the Federation of Kenya Employers (FKE) on 31st July 2017 and further meetings held on 15th August and 16th August 2017;
- f) That the Claimant had failed to disclose to the Court at the *ex parte* stage that the 2nd Respondent had, by a letter dated 3rd August 2017, put on hold the strike notice after new developments initiated by FKE and the Ministry of Labour;
- g) That the employees' right to go on strike is guaranteed under Article 41(2)(d) of the Constitution;

h) That in calling the strike, the 2nd Respondent had complied with the procedure set out under Section 76 of the Labour Relations Act and the Recognition Agreement between the parties.

4. The subject matter of this dispute first came to court in ***ELRC No 2029 of 2015: BIFU v Kenya Post Office Savings Bank*** when an agreement already concluded by the Claimant and the 2nd Respondent was nullified and the parties directed to negotiate afresh. My understanding of the situation now is that the parties have reached yet another agreement which requires concurrence by the National Treasury and the Salaries and Remuneration Commission. This concurrence has not been given hence the current stalemate.

5. In opposing the strike called by the 2nd Respondent, the Claimant states that the strike notice dated 14th July 2017 is irregular because the matter ought to have been referred to conciliation in the first place, as required under Section 76 of the Labour Relations Act. The Court was unable to understand the basis of this submission because as it stands now, there is no dispute between the Claimant and the 2nd Respondent and there is therefore nothing to refer to conciliation.

6. Regarding the issue of joinder of the 1st Respondent, which was raised in the submissions filed on behalf of the Respondents, I have this to say; workers representatives act on behalf of the whole body of workers and cannot therefore be personally sued. What is more, the act of singling out a shop steward in a CBA matter is an unfair labour practice that must be firmly discouraged. On this score, the Court finds the joinder of the 1st Respondent improper.

7. Overall the Court finds the Claimant's application to be without merit and proceeds to dismiss it with costs to the Respondents. The interim orders granted on 7th August 2017 are vacated.

8. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2017

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JUDGE

Appearance:

Mr. Mwangi for the Claimant

Mr. Munoru (Union Representative) for the Respondents