



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 418 OF 2017

KENYA UNION OF COMMERCIAL FOOD

AND ALLIED WORKERSCLAIMANT

VERSUS

MOMBASA WATER SUPPLY & SANITATION

COMPANY LIMITEDRESPONDENT

RULING

INTRODUCTION

1. The application before me is the claimant's Notice of Motion dated 19/5/2017 which seeks the following orders

- a) That pending determination of this application the honourable court do issue an order restraining the respondents from terminating the Recognition Agreement.
- b) That pending the determination of this application the court do issue an order restraining and or prohibiting the respondents from intimidating applicant shopstewards/members on the basis of their active participation in trade union activities.
- c) That the honorable court pending determination of this dispute do issue an order restraining the respondents by themselves/agents from signing a Recognition Agreement with any other union.
- d) That pending determination of this application the honorable court do issue orders restraining the respondents from negotiating and or registering collective bargaining agreement with any other union.
- e) That in the event the respondents have signed a Recognition Agreement with another union the honourable court do declare the action unprocedural, irregular and unlawful.
- f) That in the event the respondents have signed a Collective Bargaining Agreement with another union the honourable court do declare the action unprocedural, irregular and unlawful.
- g) That the honourable court do direct the respondents to conclude Collective Bargaining Agreement negotiations with the applicant within 30 days from the date of the judgment.

h) That the honourable court do order the respondents to remit the applicant the amount they failed to deduct and remit to the applicant amounting to ksh.32,750 x the number of months upto the date of the judgment.

i) That honorable courts do issue any other order it deems fit to address the cause of justice.

2. The Motion is premised on the grounds on the body of the Motion and it is supported by the affidavit sworn by the claimants Mombasa branch secretary Mr. Wario Manda. The gist of the Motion is that the claimant has a recognition agreement with the respondent and the two have negotiated and registered Collective Agreement (CBA) on behalf of the unionisable staff of the claimant. That the respondent has refused to negotiate another CBA and has threatened to do so with a rival trade union.

3. The Motion is not opposed by respondent and the issue for determination is whether the applicant has met the threshold for the exercise of this court's discretion to bar the respondent from recognizing another trade union to represent her unionisable staff.

APPLICANT'S CASE

4. The applicant has deposed that on 1/3/2017 the respondent wrote a letter to her revoking the recognition agreement it has signed with her. That act is in bad faith and it is a breach of the law and the Industrial Charter. That the respondent has denied her access to her work premises and has instead chosen to work with another union (Kenya County Government Workers Union) whose mandate is in another industry/sector. That the respondent has refused to negotiate the CBA for 2017-2018 and the applicant has since reported a dispute to the minister about the said refusal to negotiate the new CBA. The said dispute and the revocation of the recognition agreement are still pending before the minister for labour but the National Labour Board has not been involved. In her view it is only the said board that can revoke a recognition agreement and not the minister.

ANALYSIS AND DETERMINATION

5. There is no dispute that the applicant has been recognized by the respondent to represent her unionisable staff and have indeed concluded a CBA whose time has now expired. There is further no dispute that a case is pending before the Cabinet Secretary labour concerning the refusal by the respondent to negotiate 2017-2018 CBA with the applicant. There is also no dispute that the respondent wrote to the Cabinet Secretary on 27/2/2017 seeking approval for termination of recognition agreement for the claimant on grounds that the staff had resigned and joined the KCGWU and as a result the applicant had lost the simple majority representation required for recognition under Section 54 of the Labour Relations Act.

6. The foregoing matters in my view are disputes pending before another labour institution for conciliation and unless they are discontinued and referred to this court, it is only proper that I allow the other institutions a chance to finalize with the said disputes. It is not in the best interests of justice to have the disputes proceed parallel before this court and the other labour institutions. I will therefore not grant the order sought because that may prejudice the proceedings elsewhere. In addition granting the orders sought may be prejudicial to the KCGWU which has not been given a chance to defend herself.

DISPOSITION

7. For the reason that the dispute herein is substantially the same as the one pending before the labour Cabinet Secretary, I vacate the interim orders granted on 22/5/2017 and dismiss the application dated 19/5/2017. Costs in the cause.

Dated signed and delivered this 29th September 2017

O.N. Makau

Judge