



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 694 OF 2017

PASILIO IRERI.....1ST CLAIMANT

VINCENT BUSHA.....2ND CLAIMANT

DENIS RATEMO.....3RD CLAIMANT

FRANCIS KABUI.....4TH CLAIMANT

PATRICK KINGOO.....5TH CLAIMANT

NAFTAL ORIASO.....6TH CLAIMANT

PETER ORINA.....7TH CLAIMANT

PAUL WAITHAKA.....8TH CLAIMANT

SAMWEL MWACHAKA.....9TH CLAIMANT

JOHN GAKUO.....10TH CLAIMANT

JOHN MURIUKI.....11TH CLAIMANT

NIMROD MASIKA.....12TH CLAIMANT

SIMON NDERITU.....13TH CLAIMANT

STEWART ONYURO.....14TH CLAIMANT

JARED ONDARA.....15TH CLAIMANT

CALVIN NYANAMBA.....16TH CLAIMANT

GEOFFREY KADENGE.....17TH CLAIMANT

ROBERT ATURA.....18TH CLAIMANT

PATRICK INYANJE.....19TH CLAIMANT

BONIFACE MUNYAO.....20TH CLAIMANT

PETER GITONGA.....21ST CLAIMANT

VERSUS

CROWN BEVERAGES LIMITED.....RESPONDENT

RULING

1. On 30th June 2017, I dismissed the Claimants' application dated 11th April 2017. The application had sought 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 Claimants came back to court by way of Notice of Motion dated 19th September 2017, seeking the following orders:

- a) An order restraining the Respondent from undertaking any re-deployment process or in any way implementing the contents of its letter dated 29th August 2017 and forcing the Claimants into signing the terms set out in the said letter;
- b) An order restraining the Respondent from interfering with the Claimant's employment;
- c) An order directing the Respondent not to discriminate and/or victimize the Claimants;
- d) Leave to amend the Memorandum of Claim.

3. The application, which is supported by the affidavit of the 1st Claimant, Pasilio Ileri is based on the following grounds:

- a) That on 11th April 2017, the Claimants filed a claim against the Respondent who had sought to interfere with the Claimants' employment by introducing new terms of employment that were not previously included in their contracts of employment;
- b) That the Respondent denied interfering with the Claimants' employment and therefore the Claimants have continued working for the Respondent;
- c) That on 29th August 2017, the Respondent issued letters to the Claimants implying that the Claimants had been declared redundant;
- d) That the Respondent did not give the Claimants prior notice before declaring them redundant;

e) That due process was not followed in declaring the Claimants redundant, thus violating the Employment Act and the Respondent's employment guidelines;

f) That the Claimants firmly believe that the Respondent's actions are informed by malice and crafted to victimize those who had gone to court at the first instance since the rationale for the redundancy has not been clearly brought out;

g) That the Claimants had taken loans which were guaranteed by the Respondent and will suffer great financial and economic loss;

h) That the Claimants are aggrieved by the Respondent's actions and stand to suffer an injustice unless the Court grants the orders sought.

4. The Respondent's response is contained in an affidavit sworn by its Integration Manager, Andrew Musingo on 2nd October 2017. He depones that the Claimants serve in various capacities as drivers and delivery representatives in the Respondent's Warehousing and Distribution Department.

5. Musingo further depones that in July 2016 the Respondent became a subsidiary of Coca-Cola Beverages Africa resulting in its mineral water brand 'Keringet' being transferred to the Coca-Cola Company. In December 2016, the Respondent moved its operations from Ruiru to Embakasi in Nairobi.

6. It is further deponed that on 28th August 2016, the Respondent met with its employees including the Claimants and informed them about an upcoming change in its distribution model. The Claimants were also informed that the warehousing and distribution staff at the Embakasi Depot would be impacted by the change, and that the Company had initiated a process to re-deploy the affected staff within the available roles in Crown Beverages and its sister company, Nairobi Bottlers Limited.

7. The Claimants were informed that the re-deployment process would be conducted through advertisement, interviews and selection to be concluded by 18th September 2017. On 29th August 2017, the Claimants were issued with letters detailing the context of the meeting held on 28th August 2017 and further advising them that the outcome of the re-deployment process would be communicated by 20th September 2017.

8. On 29th August 2017, the Respondent informed the Kenya Commercial Food and Allied Workers Union of the upcoming re-deployment. The Union wrote back stating that it was opposed to the internal re-deployment through advertisement. On 1st September 2017, the Respondent placed internal advertisements for 35 positions within Crown Beverages Limited and Nairobi Bottlers Limited. On 4th September 2017, the Respondent met with the Union to explain the re-deployment process and on 5th September 2017, the Union wrote to the Respondent raising concerns over the re-deployment process.

9. On 6th September 2017, the Respondent wrote to the Union addressing the concerns conclusively and stating that the restructuring process would continue as scheduled. In the meantime, the Respondent received applications from 16 employees who were duly interviewed and re-deployed in various vacant positions in the Respondent and its sister company, Nairobi Bottlers Limited. Among the re-deployed employees were the 4th, 11th, 12th and 14th Claimants.

10. Musingo states that a total of 19 employees, including some of the Claimants did not apply for any position and could not therefore be placed. On 20th September 2017, the Respondent notified the Ministry of Labour that the restructuring process had been completed and that 19 positions would be declared redundant with effect from 19th October 2017.

11. The Respondent also notified the Union and the affected employees, including some of the Claimants, of the impending redundancy. The Claimants however declined to acknowledge receipt of the redundancy notices.

12. It is the Respondent's case that it has fully complied with the requirements of Section 40 of the Employment Act, 2007, on declaration of redundancy. The Respondent adds that it has complied with the merger directions given by the Competition Authority of Kenya.

13. I have considered the Claimants' current application against the Memorandum of Claim dated 11th April 2017, upon which the application was filed and note two glaring discrepancies:

a) First, the Claimants named in the Memorandum of Claim and those named in the application are different. Specifically, the Memorandum of Claim has 27 Claimants while the application has 21 Claimants. There is also a difference in their sequencing.

b) Second, the prayers sought in the application have no relationship with the main claim.

14. The logical conclusion is that the current application is not supported by any claim pending before the Court. Such an application is fatally defective and cannot elicit any orders from the Court. In the end, the application dated 19th September 2017 is struck out with no order for costs.

15. The interim orders granted on 19th September 2017 are vacated.

16. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH DAY OF NOVEMBER 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Okatch for the Claimants

Miss Oyombe for the Respondent