



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2073 OF 2015

KENYA UNION OF HAIR & BEAUTY SALON WORKERS.....CLAIMANT

VERSUS

SANA INDUSTRIES COMPANY LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 20th November 2015 and amended on 14th April 2016, the Claimant Union has sued the Respondent for summary dismissal of its shop stewards and members as well as harassment, victimization and unfair dismissal of its members. The Respondent filed a Memorandum of Defence on 23rd February 2017.

2. When the matter came up for hearing, the Claimant called its General Secretary, Cecilia Mwangi alongside three members namely; Phyllis Gathoni, Leah Irara Njoroge and Eric Nzaze Abemi. The Respondent called its Human Resource Manager, Simon Mwangi.

The Claimant's Case

3. The Claimant states that between 2013 and 2015, the Respondent had irregularly suspended 141 employees. Specifically, the Claimant points out that the said suspension was in contravention of Clauses 26(a) & (b), 27 and 28 of the Collective Bargaining Agreement (CBA). In this regard, the suspended employees were not taken through any disciplinary process nor were they issued with termination letters.

4. The Claimant adds that it was not consulted before the aforesaid suspensions were effected, contrary to the provisions of the Recognition Agreement. The Claimant terms Respondent's action a ploy to weaken its position as a trade union within the sector.

5. The Claimant seeks the following prayers:

- a) Determination that the Respondent's actions are contrary to set statutory provisions and Recognition Agreement;
- b) Determination that the Respondent's actions infringed on the Claimant's constitutional rights to fair labour practices;
- c) An order restricting the Respondent from carrying on actions of summary dismissal without extensively consulting the Claimant;

- d) An order restraining the Respondent from engaging in actions that may prove detrimental to the relationship existing between the Claimant and the Respondent;
- e) An order of reinstatement of the suspended employees;
- f) An order for payment of their salaries from the date of suspension;
- g) A permanent injunction barring the Respondent from harassing, victimizing or taking arbitrary disciplinary action against the Claimant's members and officials;
- h) 12 months compensation
- i) An order directing the Respondent to issue the Grievants with salary slips and/or pay statements as provided under Clause 20 of the CBA;
- j) General damages
- k) Costs.

The Respondent's Case

6. In its Memorandum of Defence dated 20th February 2017 and filed in court on 23rd February 2017, the Respondent admits having signed a Recognition Agreement with the Claimant.

7. The Respondent states that it has two factories located in Nairobi Industrial Area and Ruiru with a total workforce of 672 regular and around 3000 temporary employees. The Respondent adds that the nature of its operations is that it relies on temporary labour in its factories and has thus engaged and disengaged with many employees over the years.

8. The Respondent avers that in dealing with its employees, it has all along complied with the CBA.

9. Regarding the employees alleged to have been unlawfully terminated the Respondent states the following:

- a) 25 of the employees had been reinstated back to work as temporary employees;
- b) 12 employees were lawfully dismissed from employment;;
- c) 50 employees had left without notice;
- d) 24 of the stated employees could not be traced in the Respondent's records.

10. It is the Respondent's case that the Claimant has failed to prove that the 141 employees appearing on its list were unlawfully dismissed. The Respondent submits that the Claimant has only made general allegations without providing any proof of unlawful dismissal or violation of the CBA.

Findings and Determination

11. The Claimant's claim as disclosed in the Memorandum of Claim is omnibus in nature with prayers ranging from declaratory orders to special and general damages. Similarly, the evidence adduced before the Court was in the nature of general complaints. No specific evidence was led to support any of the claims made. Indeed, the employees called to testify could not confirm their employment periods or their salaries.

12. In the circumstances, the Court finds that the Claimant's entire claim was not proved and proceeds to dismiss it.

13. Each party will bear their own costs.

14. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF
DECEMBER 2017**

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JUDGE

Appearance:

Mr. Onyony for the Claimant

Miss Oyombe for the Respondent