



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT MOMBASA
CAUSE NUMBER 939 OF 2015

BETWEEN

TRANSEAST [K] LTD.....CLAIMANT

VERSUS

DOCK WORKERS UNION.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Federation of Kenya Employers for the Claimant

Leonard Rufus Ochieng' Executive Officer, for the Respondent

RULING

1. This Claimant filed an Application on 17th December 2015 seeking to have the Respondent restrained from taking part in, calling, instigating or inciting others to take part in unprotected strike, or any form of industrial action, pending hearing and determination of the Claim.
2. Interim order restraining the Respondent pending hearing and determination of the Application *inter partes* issued on 18th December 2015.
3. The Respondent filed a Replying Affidavit sworn by its General Secretary, Simon Kiprono Sang, on 3rd February 2016.
4. The Respondent filed its own Application on 22nd December 2015 asking the Court to restrain the Claimant from issuing any other termination notices under the guise of redundancy.
5. Parties agreed to have the two Applications disposed of through written Submissions. They confirmed filing of Submissions at the last mention in Court on 2nd October 2017. The Respondent seems to have submitted nothing with regard to its own Application.

The Court Finds:-

6. At paragraph 6 of Respondent's Submissions filed on 29th September 2017, the Respondent concedes

that a Trade Union that has no Recognition Agreement with the Employer, cannot engage the Employer with matters of Industrial Relations. Section 54 of the Labour Relations Act 2007 confers on a recognized Trade Union, the sole collective bargaining agency, in relation to the recognizing Employer. The Respondent submits that the Application by the Claimant should be allowed, with no order on the costs.

7. The background to the Claimant's Application, is that the Claimant has a Recognition Agreement with Transport and Allied Workers Union of Kenya (TAWU). In October 2015, the Claimant declared 25 employment positions redundant. The affected Employees were Members of TAWU. The process was carried out in accordance with the CBA concluded between the Claimant and TAWU.

8. In December 2015, the Respondent issued upon the Claimant a strike notice, alleging the Claimant had failed to notify the Respondent of the intended redundancy. The Claimant brought this Claim to restrain the Respondent from proceeding with strike action, as the Claimant does not have any relationship with the Respondent.

9. The Court is satisfied based on these facts, the Law and the concession made by the Respondent, that the Application by the Claimant dated 17th December 2015 is merited.

10. With regard to Respondent's Application, the Court's view is that the Respondent Union has not demonstrated its capacity to represent Employees of the Claimant. The Redundancy Notices in question refer to CBA concluded between the Claimant and TAWU. TAWU is not a party to this Claim. The Respondent in any case has not made any submission with regard to its Application. The Application is declined.

IT IS ORDERED:-

a) The Application dated 17th December 2015, filed by the Claimant on the same date, is granted.

b) Application filed by the Respondent on 22nd December 2015 is declined.

c) Costs in either case to the Claimant.

Dated and delivered at Mombasa this 15th day of December 2017.

James Rika

Judge