



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 395 OF 2015

TRANSPORT WORKERS UNION (KENYA).....CLAIMANT

v

KIMILILI HAULIERS CO. LTD

RIFT PETROLUEUM CO. LTD

FIMS LTD..... RESPONDENTS

RULING

1. The Transport Workers Union (Kenya) commenced legal proceedings against the Respondents on 11 December 2015 and the issue in dispute was stated as *wrongful and unfair intended termination on account of redundancy by the Respondent*.
2. Simultaneously filed with the Memorandum of Claim was a motion under certificate of urgency seeking
 - i.
 - ii. The honourable court be pleased to issue stay orders maintaining status quo and restraining the respondent from executing the intended termination of the Kimilili Hauliers Limited and Sister Companies (Fims Limited/Rift Petroleum Limited) employees, and until this matter is heard and determined.
 - iii. The further interim orders to be issued restraining the respondent from intimidating harassing, declaring redundant or otherwise discharging their duties until this matter is heard and determined.
 - iv. Any other relief the court may deem just and expedient.
 - v. The cost of this application to be paid by the respondents.
 - vi. The respondents are on record having perpetually frustrated employees who are members of the claimant purposely to make them revoke their union membership in an effort to suffocate the claimant.
3. The Court directed that the motion be served for *inter partes* hearing on 27 January 2016, but the Respondents sought more time to file their responses as they had been served only on 20 January 2016.
4. The Respondents filed a Notice of Preliminary Objection and replying affidavit sworn by Francis Osoro Ondera on 4 February 2016
5. The motion was ultimately taken on 8 February 2016.
6. The Court has considered the motion and supporting affidavit and replying affidavit and objection and

the submissions made.

7. The supporting affidavit to the motion alleges that the Respondents sought to declare redundancies being impugned around November/December 2015, over 2 months past now.

8. The principles for grant of injunctive relief were set out long ago in the case of *Giella v Cassman Brown and Bros Co. Ltd* (1973) EA 338

9. The Union however has not shown whether the Respondents have taken any action regarding the alleged intended redundancy within the intervening period.

10. Apart from that, the Union has not shown that it has a prima facie case with a probability of success or that irreparable harm will be occasioned to its members were the orders sought be declined.

11. In any case, were the Respondents to take any action not anchored in the law governing employment relationships/redundancies, the Union and/or the employees would have adequate remedies including reinstatement, reinstatement or compensation as envisaged by section 49 of the Employment Act, 2007.

12. Again, the remedies sought in the Memorandum of Claim and in the motion are incongruent. The orders appear to be in *vacuo*.

13. Moreover, in this respect, the Court wishes to observe that Courts should start being very strict and firm with Unions with regard to their duty to prepare pleadings which are concise, logical and coherent. Pleadings should at the very least comply with the standards set in the Industrial Court (Procedure) Rules, 2010.

14. The motion here was not coherent at all.

15. The upshot of the foregoing is that the motion filed in Court on 11 December 2015 is dismissed with costs to the Respondents.

Delivered, dated and signed in Nakuru on this 26th day of February 2016.

Radido Stephen

Judge

Appearances

For Claimant: Mr. Beru (Branch Secretary) Transport Workers Union (K)

For Respondent: Mr. Oribo instructed by Omwenga & Co. Advocates

Court Assistant: Nixon