



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 396 OF 2015

TRANSPORT WORKERS UNION (K)

CLAIMANT

v

KIMILILI HAULIERS CO. LTD

RESPONDENT

RULING

1. The Transport Workers Union (Kenya) commenced legal proceedings against the Respondent on 11 December 2015, and the issue in dispute was stated as *unfair termination and underpayment of the terminal benefits*. The names of the Grievants were listed in the body of the Memorandum of Claim as John Wanyama, Johana Musungu, Winston Wafula Murunga, Jason Obegi, Peter Mungai and Francis Erima.
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/sister company from executing the intended closure/chance of ownership of the companies (Kimilili Hauliers Ltd/Fims Ltd) sister companies until this matter is heard and determined.
 - iii. Any other relief the court may deem just and expedient.
 - iv. The cost of this application to be paid by the respondent.
3. The Court directed on 11 December 2015 that the motion be served for *inter partes* hearing on 27 January 2016, but on the return date the Respondent sought more time to file their responses as they had been served only on 20 January 2016.
4. The Respondent filed a Response to the Memorandum of Claim, Notice of Preliminary Objection and Replying Affidavit sworn by Francis Osoro Ondera on 4 February 2016.
5. The motion was taken on 8 February 2016, and ruling was reserved to today.
6. The Court has considered the papers and submissions placed before it by the parties.
7. This is yet another incoherent application by this Union.
8. The substance of the cause of action presented by the Union in the Memorandum of Claim is the unfair termination of employment and underpayment of wages to some 6 named Grievants while the substance of the motion under consideration seeks to stop the Respondent from closing down.
9. That the Union has not established a legal basis for seeking the order set out in the motion would be an understatement as the Grievants services were terminated on 14 January 2014.
10. The Court cannot stop the Respondent from closing down if it cannot survive the business or it is unable to run its operations and further no nexus has been demonstrated between the remedies outlined in the Memorandum of Claim and those sought in the motion.
11. The Union has equally not made any attempt to meet the standard for the grant of injunctive relief

- as was set out long ago in the case of *Giella v Cassman Brown & Bros Co. Ltd* (1973) EA 338.
12. The Court has also noted that the Union has sought orders against a party (Fims Ltd) not listed in the Memorandum of Claim as a Respondent.
 13. Before concluding, it is the view of the Court that it is not necessary to examine the issue of *res judicata* at this time and the Respondent is at liberty to raise it at an opportune moment.
 14. In conclusion, the Court finds that the motion dated 9 December 2015 has no merit whatsoever and it is dismissed with costs to the Respondent.
 15. The parties should conclude the pretrial procedures so that this Cause can be fixed for hearing.

Delivered, dated and signed in Nakuru on this 7th day of March 2016.

Radido Stephen

Judge

Appearances

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

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

Court Assistant Nixon