



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 2258 OF 2015

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 18TH APRIL, 2016)

ROBERT JOSEPH SIFA.....CLAIMANT

VERSUS

TRADEWINDS AVIATION SERVICES LIMITED ...RESPONDENT

RULING

1. The Application before Court is one dated 17.12.2015, where the Applicant seeks the following Orders:

1. *The Application be certified as urgent and service thereof be dispensed with at first instance.*
2. *That pending the hearing and determination of this application inter-partes, this Honourable Court do issue an interim Order of injunction restraining the Respondent from redeploying the Applicant as the letter dated 7.12.2015.*
3. *That pending the hearing and determination of this application inter-partes, this Court do suspend the letter of redeployment dated 7th December, 2015.*
4. *Pending the hearing and determination of this application inter-partes, this Honourable Court do issue an order of injunction restraining the Respondent from redeploying the Applicant as per the letter dated 7.12.2015.*
5. *The costs of this application be provided for.*

2. Which Application is based on the grounds that:

- a. *The Claimant is employed by the Respondent as a ramp agent. He is also a member of Kenya Aviation Workers Union and is currently serving as the shop steward at the Respondent's premises.*
- b. *On or about 7th December, 2015, the Respondent without reason purported to redeploy the Claimant as an office assistant with a job description that is totally different from his current job description.*
- c. *The Respondent's actions were contrary to the contract of Employment and the Employment Act and constitute a demotion thereby amounting to unfair labour practices.*

- d. ***The said redeployment was done without affording the Claimant a hearing and the Claimant has reason to believe that he was being victimized for being a vocal trade unionist.***
- e. ***It is therefore in the interest of justice that the application herein be heard and the orders sought be granted.***
3. The application is supported by the Claimant's Affidavit sworn on 17.12.2015, where he states that he was employed on contract by the Respondent on 7th July, 2011, which contract was extended severally. On 23rd July, 2015, he was given a new contract as a ramp agent which remained to be the case until 7.12.2015 when the Respondent without any reason purported to redeploy the Claimant. He was given a new job description which according to him amounted to a demotion.
 4. The Claimant states that the actions of the Respondent of redeploying him was an attempt to punish him for being a vocal shop steward of the Kenya Aviation Workers Union and that the Respondent actions amount to unfair labour practices.
 5. The Respondent opposed the Application and filed a Replying Affidavit sworn by one Samwel O. Obondo on behalf of the Respondent where he admits that the Claimant was employed by the Respondent as a loader on a 2 year contract. That the Claimant had previously worked as a cleaner from the year 2011-2013.
 6. They state that the Claimant had been subject to disciplinary proceedings involving the Respondent and its clients Kenya Airways held on 28.10.2015 touching on excess weight cheating. Annexed to their affidavit is true copy of the minutes marked "**SOO 3**" That following these disciplinary proceedings Kenya Airways categorically refused to re-admit the Claimant in to their operations (copy of the email communication annexed as "**SOO 4**") leaving the Respondent with no option but to transfer the Claimant from the transit cage to the Freighters Department with effect from 30.10.2015.
 7. That barely three (3) weeks into this department, the Respondent received another complaint from another client – Astral Aviation, regarding integrity of the Claimant alleging that between 16th-17th November, 2015, the Claimant was found tampering with cargo attempting to access its contents. That the Respondent set up a disciplinary hearing to be held on 3.12.2015.
 8. The Respondent states that before this disciplinary hearing could take place they received yet another complaint from another client DHL, regarding the Claimant's performance and attitude. The Respondent set the hearing of the said case on the same day as the previous complaint on 3.12.2015.
 9. They state that during the disciplinary proceedings held on 3rd December, 2015, attended by the Respondent, the Claimant heard the Complaint by DHL and after the Claimant was allowed to defend himself he was found culpable of the allegations made against him. Thereafter the complaint by Astral Aviation was scheduled for 4.12.2015.
 10. The Respondent further states that on the 4.12.2015, the Claimant arrived for the proceedings accompanied by Kenya Aviation Workers Union officials and shop stewards as provided for under Section 41 (1) and (2) to intimidate the Respondent's officials prompting the adjournment of the said proceedings generally.
 11. It is the Respondents position that the redeployment of the Claimant was informed by the foregoing series of events and this was not an attempt to frustrate the Claimant's participation in any union activities as alleged. In any event he was still in possession of his staff pass No. 2AL11257 and as such he could access staff who were members of the union.

12. The Respondent further states that redeployment is an internal administrative matter of the company and should the prayers sought be granted it would be tantamount to the Court descending into the day to day running of the workplace.
13. It is also the respondent's position that the letter of redeployment did not interfere with other terms and conditions of employment as to amount to a demotions as alleged by the Claimant.
14. The Claimant filed a further affidavit to refute some facts in the Respondent's replying affidavit. He states that he was cleared of the complaints by Kenya Airways and that the other emails relied on are internal portions of which are concealed.
15. The parties elected to dispose of the application by way of written submissions. The Claimant submits that he was cleared of all allegations of stealing, the minutes provided by the Respondent are proof of this and that there have been no other complaints by any other client. Further the Claimant relies on the Fair Administrative Action Act 2015 which requires a hearing before any administrative action is taken against any person.
16. The Claimant urges the Court to intervene since this is a case of unfair labour practices as he is being victimized for being a member of a trade union. He prays for the application to be allowed as prayed.
17. The Respondent on the other hand submits that the Claimant has not satisfied the requirements for granting an interlocutory injunction set out in the case of ***Giella Vs Cassman Brown & Co. Ltd*** which are that the applicant must show a prima facie case with probability of success.
18. Secondly, the applicant must show that if the Order is denied he stands to suffer injury that cannot adequately be compensated by damages in the event the suit succeeds after trial. Lastly, if the Court is in doubt, the application should be decided on a balance of convenience.
19. They are of the view that a prima facie case is one which involves breach of a legal right owed to the Applicant by the Respondent unlike in the instant application. They rely on the case of ***Mrao Limited Vs. First American Bank of Kenya (2003) KLR 125*** where the Court held that:

"...a prima facie case in a civil application includes but is not confined to a "genuine arguable case:" it is a case which, on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter..."
20. The Respondent alleges that the Claimant has not shown the breach of any legal right. They state that the re-deployment is justifiable, fair and does not amount to a demotion and the Claimant did not suffer any wrong as the Respondent was only exercising its authority as their client Kenya Airways had categorically refused to re-admit him in their premises.
21. On irreparable harm the Respondent submits that the Claimant will not suffer irreparable injury because in the alleged letter of redeployment his terms and conditions remain the same and thus his rights to engage in trade union activities have not been prejudiced in any way. The Respondent states this does not amount to irreparable loss that cannot be compensated by damages should his claim succeed.
22. They also state that the balance of convenience shifts in their favour since if the Orders sought are granted it would be tantamount to the Court descending into the day to day running of the Respondent's work place.
23. Having considered submissions of both parties, this Court finds that in the Applicant has not shown that his redeployment is based on his Trade Union affiliation. Also in view of the relationship between the Respondent and their client KQ, the redeployment of the Applicant is necessary in the interim. The Applicant has not show how he will be prejudiced by the

redeployment.

24. I find the application and orders sought are not warranted. I vacate the interim orders granted.
The suit be set down for hearing of the main suit.

25. Costs in the course.

Read in open Court this 18th day of April, 2016

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Respondent

No appearance for Claimant