



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 2073 OF 2015
KENYA UNION OF HAIR AND BEAUTY SALON WORKERS.....CLAIMANT
VS
SANA INDUSTRIES LIMITED.....RESPONDENT

RULING

1. This ruling proceeds from the Claimant's application dated 20th November 2015 and filed in Court on even date. The application, which is supported by the affidavit and further affidavit of the Claimant's General Secretary, Cecily Mwangi sworn on 20th November 2015 and 1st March 2016 respectively, seeks orders to restrain the Respondent from dissipating the union membership by indefinitely suspending elected officials, shop stewards and members.
2. The Claimant also seeks reinstatement of suspended union members and a permanent injunction barring the Respondent from taking any action that amounts to victimisation on account of union activities and membership.
3. The application is based on the following grounds:
 - a. That the parties have a valid Recognition Agreement signed on 26th February 2013 and a Collective Bargaining Agreement (CBA) signed on 11th September 2013;
 - b. That in disregard of these agreements and the law, the Respondent, without cause suspended all the elected officials and shop stewards of the union;
 - c. That the Respondent has refused to honour the provisions of the CBA relating to disciplinary procedures, issuance of appointment letters and dispute resolution systems;
 - d. That the Respondent has failed to engage the Union in employee relations;
 - e. That the Respondent has no regard for Kenyan employment law and is perpetuating unfair labour practices.
4. The Respondent's response is contained in a replying affidavit sworn by the Respondent's Personnel Officer, Simon Mbuthia on 11th February 2016. Mbuthia depones that the Respondent has a workforce of 672 regular employees and about 3000 temporary employees. He adds that by the nature of its operations, the Respondent relies on temporary labour in its factories and has over the years engaged and disengaged with many employees.

5. Regard to the list of employees stated as having been suspended, Mbutia depones that 25 had been reinstated as temporary employees, 12 had been lawfully dismissed, 50 had deserted duty and 24 could not be traced in the Respondent's records.

6. The issue for determination in this application is whether the Claimant has established a *prima facie* case for granting of the orders sought at the interlocutory stage. As held by the Court of Appeal in ***Mrao Ltd v American Bank Ltd & 2 Others [2003] eKLR*** a *prima facie* case is more than an arguable case. Both the Claimant and the Respondent have raised many issues that call for determination by the Court. There are even allegations of misrepresentation and forgeries. Having looked at the affidavits and supporting documents presented by the parties, the Court has formed the opinion that is not possible to render a determination without giving the parties an opportunity to call *viva voce* evidence in support of their respective cases. The Claimant's application therefore fails and is dismissed with costs being in the cause.

7. I direct that the main claim be listed for hearing on priority basis.

8. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF APRIL 2016

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JUDGE

Appearance:

Mr. Onyony for the Claimant

Miss Oyombe for the Respondent