



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT MOMBASA
CAUSE NUMBER 393 OF 2015

BETWEEN

AMALGAMATED UNION OF KENYA METAL

WORKERS..... CLAIMANT

VERSUS

1. DOCK WORKERS UNION

2. ASSOCIATED VEHICLE ASSEMBLERS LIMITEDRESPONDENTS

RULING

1. The Claimant Union filed this Claim on 15th June 2015. With the Claim was filed an Application for interim measures. The Application, made under certificate of urgency seeks the following principal interim measures:-

- a. The 1st Respondent is restrained from calling any strike [based on the subject matter of the Claim] pending hearing and determination of the Claim.
- b. The 2nd Respondent is restrained from making any deductions [from its Unionisable Employees] in form of union dues, on behalf of the 1st Respondent.
- c. The 1st and 2nd Respondents are restrained from signing any Recognition Agreement, pending hearing and determination of the Claim.

2. The Application was scheduled for *inter parte* hearing on the 14th July 2015. The Representatives for the Claimant and the 2nd Respondent attended Court. There was no attendance for the 1st Respondent. The attending Parties were in agreement that the Application is allowed as prayed, and the Court granted their prayer.

3. The 1st Respondent filed an Application on the following day, 15th July 2015, seeking to have a reversal of the orders granted in favour of the Claimant, on the 14th July 2015. 1st Respondent's Representative, Executive Officer Mr. Leonard Rufus Ochieng,' explains in his supporting Affidavit that he was caught up on the road in the morning of 14th July 2015, and failure to attend Court was unintended. By the time he arrived, he found the orders had already been made. He states it is important

that the orders are reviewed, as they violate the 2nd Respondent Employees' fundamental rights and associational freedoms under Section 4 and 48 of the Labour Relations Act 2007, Article 41 of the Constitution, and International Labour Organization Convention 87 and 98.

4. The Claimant and the 2nd Respondent are opposed to the 1st Respondent's Application. They filed their Replying Affidavits. It was agreed by all the Parties that the Application is considered and determined on the strength of the Parties' Submissions. Parties confirmed the filing of their Submissions on 12th February 2016. Today's Ruling, is on the Application filed by the 1st Respondent.

The Court Finds:-

5. It is not necessary to revisit and vacate the orders granted to the Claimant on the 14th July 2015. It is unfortunate that Mr. Ochieng' was unavailable when the orders issued, but a careful examination of the Parties' respective positions, leads the Court to conclude that Mr. Ochieng's participation, would not have yielded a different result on 14th July 2015.

6. This is because the Claimant Union, and the 2nd Respondent Employer, already have a Recognition Agreement and have a valid Collective Bargaining Agreement. Employees of the 2nd Respondent are for now enjoying the representation of the Claimant. The 1st Respondent is a Trade Union which claims to have recruited from the 2nd Respondent. Its position would be that it has acquired the right of representing the Unionisable Employees of the 2nd Respondent, in place of the Claimant. The Claimant seeks to protect the relationship it has with the 2nd Respondent. The 2nd Respondent does not approve the intermeddling of the 1st Respondent with its Employees, and supports the retention of the relationship it has with the Claimant.

7. The interim measures granted to the Claimant merely aim at retention of the status quo. If the 1st Respondent has grounds to replace the Claimant Union as the sole Collective Bargaining Agent at the 2nd Respondent's Unit, it shall establish these grounds upon trial. For now, there would be no justification to have another Recognition Agreement at the same workplace, and have the same Employees remit trade union dues to two Trade Unions. The participation of the 1st Respondent, in the proceedings of 14th July 2015, would therefore not have yielded a different result. ***The 1st Respondent's Application filed on 15th July 2015 is rejected. The orders made on 14th July 2015 shall remain in place. Parties shall set down the main Claim for hearing, once they are through with the filing of their Pleadings, and the requisite documents. Costs of the Application shall be in the Cause.***

Dated and delivered at Mombasa this 18th day of July 2016.

James Rika

Judge