



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 2181 OF 2014

TRAILINK GROUP LIMITED CLAIMANT

VERSUS

KENYA LONG DISTANCE TRUCK DRIVERS AND

ALLIED WORKERS UNION RESPONDENT

Mr. Chigiti for Claimant / Employer

Mr. Kimani F. N. for Respondent / Union

RULING

1. Application dated 5th December 2014 brought by Trailink Group Limited, the employer against the union was certified urgent to be heard on 11th January, 2015.
2. Interim relief was granted in terms of prayers 1, 2 and 3 of the Notice of Motion dated 5th December 2014, pending the hearing and determination of the same. Meanwhile the union filed another Application on 5th January, 2015 in which interim relief was granted in terms of prayer (a) and (b) of the Notice of Motion on 8th January 2015.
3. The effect of the interim reliefs granted on 8th December 2014 was to stop the union from calling the Intended strike and the employees from participating in the Intended strike pending the hearing and determination of the Application.
4. Whereas the granting of prayers (a) and (b) in the Notice of Motion dated 5th January 2015 was to injunct the employer from dismissing its employees who are members of the Respondent union pending the hearing and determination of the Application.
5. The Court notes that no substantive claim has been filed prior or simultaneously with the Application dated 5th January 2015.

However, a Memorandum of Claim was filed simultaneously with the Application dated 5th December 2014.

6. The issues leading to the alleged strike action and lock out were refusal by management to recognize union and refusal to remit union dues.

7. The other issue in dispute was non-payment of mileage allowance by the employer.

8. According to the Claimant / employer the issues of recognition and non-payment of mileage allowance have been resolved and the Claimant seeks final relief set out as follows;

(i) declaration that the strike notice is illegal and null and void.

(ii) an injunction to issue restraining the union and the employees from carrying on with the Intended strike and any other relief the Court may deem fit.

9. The union on the other hand claims that the employer has locked out its employees and has refused to pay the employees their emoluments including salaries, overtime pay and any other allowances and contests the findings by the conciliator contained in the filed report dated 3rd December 2014.

10. Furthermore the union prays that the Return to Work Formula entered into on 15th December 2014, by the parties be respected by the employer.

11. The Court cannot determine the issues in dispute unless both parties comply with the interim orders of the Court issued on 8th December 2014 and 8th January 2015 respectively.

12. It is in the interest of justice that the root cause of the dispute be addressed by hearing and determining the main suit filed herein.

13. The Court is satisfied that the Applicants in both Applications have made out a *prima facie* case and that irreparable loss will be suffered by the Applicants in both Applications if the interim orders are not confirmed pending the hearing and determination of the main suit.

14. The union is directed not to embark on the Intended strike action as per the notices issued and the employer is directed not to lock out any of its employees from its premises and allow all of them to work normally and the employer to pay their remuneration in terms of their contracts of employment in compliance with the Return to work Formula entered into on 15th December 2014.

15. Meanwhile the union is directed to respond to the main suit filed by the employer on 8th December 2014.

Costs in the cause.

Dated and Delivered at Nairobi this 13th day of March, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE