



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NO. 3 OF 2015

BETWEEN

TAILORS & TEXTILES WORKERS UNION CLAIMANT

VERSUS

MOMBASA APPAREL (EPZ) LIMITED RESPONDENT

Rika J.

Court Assistant: Benjamin Kombe

Mr. Oduor Advocate instructed by J.D. Oduor & Company Advocates for the Claimant

Mr. Makokha Advocate instructed by the Federation of Kenya Employers for the Respondent

RULING

The Claimant Union filed an Application dated 9th January 2015, seeking orders to have the Respondent compelled to return to work Employees who had allegedly been locked out by the Respondent illegally.

It sought also, to have the Respondent ordered to remit Trade Union Dues for all Employees who have signed Check-Off Forms, and have the Parties sign a Recognition Agreement.

The Application came up for hearing before Hon. Justice Onesmus Makau on 14th January 2015, when Parties agreed:-

1. All Employees who were working at Changamwe Branch in December 2014 do report to work unconditionally from the morning of 15th January 2015.
2. The Respondent is restrained from victimizing and intimidating the Employees on account of Union affiliation.
3. The issue of deduction and remittance of Trade Union Dues and Recognition is referred to the County Labour Office Mombasa for conciliation forthwith, and report filed within 14 days from today involving the F.K.E., the Respondent and the Claimant Union.
4. Mention on 29th January 2015 before Hon. Justice Rika.

At the Labour Office, Conciliation resulted in an agreement on the following terms, *inter alia*:-

1. The Management pins copies of the Check-Offs from the Union on the Notice Board for Workers to read.
2. Any Worker who objects to the Union Membership as shown on the list, makes objection in writing to the Management by 15th February 2015.
3. The Management shall deduct Union Dues to all who have joined the Union effective from 15th February 2015.

On 29th January 2015, the Parties' Advocates attended Court for mention. They confirmed they had agreed, and the Court recorded agreement, on all issues except Recognition. It was left for the Court to determine the balance of the dispute upon hearing the Parties in full. The Respondent was ordered to file its Response to the Claim in readiness for hearing and disposal of the remainder of the dispute. It has done so, and one would expect all that was left is for the main dispute to be scheduled for hearing.

Unfortunately the Claimant Union has been compelled to return to Court on another interlocutory Application dated 11th February 2015. The Application seeks:-

1. The Respondent is found to be in contempt of Court for disobeying the Court Order issued on the 14th January 2015, by victimizing and intimidating Workers on account of Union affiliation.
2. The Respondent is compelled to sign the Recognition Agreement dated 19th January 2015.
3. The Respondent is compelled to reinstate 6 Union Members illegally sacked.

The Application is supported by two Affidavits sworn by the Claimant's Mombasa Branch Secretary Odongo Evans. It is opposed through the Affidavit of the Respondent's Manager Pankaj Mehta. Parties were heard on 12th March 2015.

The Court Finds

1. The Court gave an Order on 29th January 2015, reserving the issue of Recognition for substantive hearing. It is improper for the Claimant to return to Court on an Application, and seek immediate Recognition. This prayer is refused.
2. The Order recorded on 14th January 2015 required all Employees who were working at Changanwe Branch in December 2014 to return to work. The Respondent was ordered not to intimidate or victimize Employees on account of Trade Union Affiliation.
3. There is evidence some Employees, whose Names are given in the Claimant's letter dated 26th January 2015 left employment in unclear circumstances, shortly after the Court gave its Order of 14th January 2015.
4. This evidence does not however establish that the Employees were victimized by the Respondent, in contravention of the Order. It would have assisted the Court if the individual Employees swore Affidavits explaining the circumstances of their departure. The reasons given by the Respondent in annexure 3 of the Replying Affidavit, as constituting the circumstances of the Employees' departure, needed to be contradicted by the Employees themselves, to show victimization and/or intimidation, and in establishing a case for contempt of Court.
5. The Claimant's complaint that the Respondent has not effected the agreement for deduction and remission of Trade Union Dues, is not a complaint raised in the Application filed in Court on 12th February 2015. It was a complaint raised *ex tempore* by Counsel for the Claimant. There was no opportunity given to the Respondent to present evidence of deduction and remission.
6. The Parties' Agreement before the Labour Office narrowed down the issue in dispute to one of Recognition. The Agreement was endorsed by the Court.
7. It was agreed: ***The Management pins copies of the Check-Off Forms from the Union on the notice board for Workers to read. 2) Any Worker who objects to the Union Membership as***

shown on the list, makes objection in writing to the Management by 15th February 2015.

8. The Respondent did not comply with this Order. It instead pinned a Notice to All Employees, which reads: ***This is to notify you that we have received Check-Off System Forms from T.T.W.U. For the purpose of deducting from your salaries approx Kshs.300.00 or 2.5% of salaries on monthly basis as union dues. We request you to confirm in writing whether the signatures on the Check Off Forms are yours or not, and whether we should process your deductions or not. Kindly respond as soon as possible.***
9. It is imperative the Respondent pins the actual Check Off Forms on the notice board as agreed, and Employees with objection given adequate opportunity to communicate their objection to the Management. The Notice as pinned was in contempt of Court, something the Respondent must be punished for.

IT IS ORDERED:-

- (a) The Respondent shall within 7 days of this ruling pin copies of all the Check-Off lists on the notice board.***
- (b) Employees who object to their inclusion on the lists to make their objection to the Management in writing within 7 days of the lists being pinned on the notice board.***
- (c) The Respondent's Notice to All Employees was in contempt of the Court.***
- (d) The Respondent shall pay a fine of Kshs.50,000 in Court within 7 days of this Ruling.***

Dated and Delivered at Mombasa this 22nd day of May 2015

James Rika

Judge