



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 471 OF 2015

KENYA SCIENTIFIC RESEARCH INTERNATIONAL

TECHNICAL & INSTITUTION UNIONCLAIMANT/RESPONDENT

VERSUS

KENYA MEDICAL SUPPLIES AGENCY (KEMSA)..... RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa on 1st July, 2015)

RULING

1. The application before court is the one dated 23/3/2015 filed by the Applicants herein through their Secretary General. The application is brought under Section 12 of Industrial Court Act 2011 Section 12 of Labour Institutions Act 2007 Labour Relations Act 2007, Section 4, 56 and Kenya Constitution Article No. 36 and 41(c).
2. The Applicants seek orders that the Respondents be compelled to allow the Claimant/Applicants enter and talk to workers of the Respondent for the purpose of recruitment. They also seek orders to compel the Respondents to allow its workers to join the union of their choice according to the Labour Relations Act 2007, Section 4 and Article 36 and 41 (c) of the Kenya Constitution.
3. The application is based on the following grounds:
 1. *That the ruling in the above case was delivered on 14th December 2012 and thereafter the same was mentioned before court on the 15th July 2014 to confirm compliance wherein the same was confirmed and marked as settled.*
 2. *That Martin J. Oduor the Secretary General of the Claimant union/Applicant went to recruit the workers of the Respondent but was refused entry.*
 3. *That the Respondent refused to allow union officers Patrick Mwanzia and Julius Masinde to enter the premises or talk to the workers.*
 4. *That the Respondent has denied its workers the freedom of association by violating Section 4 of Labour Act 2007 and Kenya Constitution Article No. 36 and 41c.*
 5. *That the workers of the Respondent will have no Collective Bargaining Agreement in future if they are not allowed to join the Union of their choice.*

and it is supported by the annexed affidavit sworn by Martin J. Oduor the Claimant's Secretary General herein.

4. The Respondents were served with this application and they instructed counsel who entered appearance on their behalf on 24/4/2015. No other pleadings were filed by the Respondents.

Thereafter the application was set to be heard on 26/5/2015, the Respondents having been duly served. They failed to attend court. This application therefore proceeded for hearing *ex parte*.

5. The Applicants have come to court under Section 4(1) of the Labour Relations Act which provides that:

“Every employee has the right to:

- a. ***participate in forming a trade union or federation of trade unions;***
- b. ***join a trade union; or***
- c. ***leave a trade union.”***

6. Article 4 (2) of the Constitution of Kenya has similar provisions that:

“Every worker has the right to form, join or participate in the activities of programmes of a trade union”

7. The Applicants therefore contend that by the Respondents denying them access to their premises for purposes of recruitment of members, they are denying the employees these rights as enshrined in the law.

Section 56 of the Labour Relations Act also provides that:

1. Without limiting the matters that may be dealt with in a recognition agreement, a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employers premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including but not limited to:

- a. ***recruiting members for the trade union;***
- b. ***holding meetings with members of the trade union and other employees outside of working hours;***
- c. ***representing members of the trade unions in dealings with the employer; and***
- d. ***conducting ballots in accordance with the constitution of the trade union.***

2. An employer may:

- a. ***impose reasonable conditions as to the time and place of any rights granted in this section to avoid undue disruption of operations or in the interest of safety; and***
- b. ***require officials or trade union representatives requesting access to provide proof of their identity and credentials.***

3. Any dispute concerning the granting of access, or the conditions upon which access is to be granted, may be referred to the Industrial Court under a certificate of urgency.

8. It is apparent that the Respondents have failed to give access to the Applicants as pleaded hence this application and in so doing, they are infringing on the rights of the employer to freely join and participate in the activities of a trade union.

9. I find this application has merit and I allow it and order that the Respondents do henceforth give access to the Applicants to enter their premises within reasonable time for purposes of recruitment of members and to allow employees to join a union of their own choice. The logistics of such entry to be agreed upon by the parties.

Read in open Court this 1st day of July, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Joshua Mwatia for Claimant Union – Present

No appearance for Respondent Applicants