



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 121 OF 2013

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS.....CLAIMANT**

VERSUS

**TOP RANK BREWING COMPANY
LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 9th October, 2015)

RULING

On Friday 05.06.2015 the court delivered the judgment in this case. The court entered judgment for the claimant against the respondent for orders as follows:

1. That the parties shall negotiate and sign formal recognition agreement by 01.08.2015 so as to pave way for conclusion of the relevant collective bargaining agreement by 01.12.2015.
2. The respondent shall comply with section 48(2) and (3) of the Labour Relations Act, 2007 by effecting deductions of trade union dues and effecting appropriate remittances with effect from end of June 2015.
3. The respondent's Chief Executive Officer and Managing Director shall be responsible on the part of the respondent for full compliance with orders in this judgment.
4. The respondent to pay the claimant's costs of the suit.

On 29.06.2015 the respondent filed a notice of motion under Order 42 Rule 6 and Section 3A of the Civil Procedure Rules and all other enabling Rules, Regulations and Provisions of Law. The respondent prayed for Orders:

1. That this application be certified as urgent and be heard ex-parte in the first instance.
2. That this Honourable court be pleased to order a temporary stay of execution pending the hearing and determination of the application.
3. That this Honourable court be pleased to grant a stay of execution pending the hearing and determination of intended appeal.
4. That cost of this application be provided for.

The application was supported with the affidavit of Michael Kamau Karing'u, the respondent's Managing Director.

The grounds as urged in support of the application are as follows:

- a) The claimants may at any time move to execute the judgment.
- b) The appeal is arguable, is not frivolous and will be rendered nugatory if the stay of execution is not granted.
- c) The respondent will suffer substantial loss and hardship if stay of execution is not granted.
- d) The claimant will not suffer prejudice if orders as prayed are granted.

The claimant filed on 31.07.2015 the replying affidavit of John O. Owiyo to oppose the application. The grounds of opposition as urged for the claimant are as follows:

- a) The applicant has not established that the appeal is arguable and not frivolous.
- b) There is possibly no point of law arising from the judgment on record that would justify an appeal to the Court of Appeal.
- c) Allowing the appeal will occasion the claimant irreparable harm, namely, workers' right to join and participate in union activities will be unfairly delayed.

The court has considered the application, the supporting affidavit, the replying affidavit and the submissions made for the parties and make findings as follows:

1. Under Article 41(2) (c) of the Constitution every worker has the right to form, join or participate in the activities and programmes of a trade union. It was in recognition of that right that the court made orders as set out in the judgment. The application has not established the substantial loss that would arise if that right is adjourned or suspended as contemplated in the present application. The court finds that orders as prayed for in the application when granted will amount to suspension of the workers' constitutional right to associate in a trade union and without any justification.
2. Order (2) in the judgment is essentially a money decree requiring the applicant to make payments by way of union dues to the claimant. No security has been provided to warrant stay of that money decree. The failure to provide the security diminishes the possibility of granting the application as prayed for.
3. The Court returns that the applicant has failed to provide the prerequisite security and to establish substantial loss that would occur so as to justify an order of stay of execution pending appeal. It was not enough for the applicant to merely allege it would suffer substantial loss. Such loss needed to be established but the applicant failed to do so.
4. The court considers that arguments as urged for parties about whether the appeal was arguable were not relevant in deciding the application. The court observes that under section 17 of the Employment and Labour Relations Act, 2011, appeals from the court's decisions shall lie to the Court of Appeal on grounds both of law and fact.

In conclusion, the notice of motion filed for the respondent on 29.06.2015 is hereby dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 9th October, 2015.**

BYRAM ONGAYA

JUDGE