



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1134 OF 2015

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

VERSUS

TUSKER MATTRESSES RESPONDENT

Mr. Nyabena for Claimant / Applicant

Mr. Kanchory0 for Respondent

RULING

1. Application dated 29th June 2015 was filed on 1st July 2015 seeking for orders *interalia*;

That pending the hearing and determination of this application the Respondent be restrained by itself, servants and employees by a temporary injunction from terminating, dismissing or disciplining ninety one (91) of its employees from the Respondent's Beba beba Branch.

2. The Application is supported on the grounds set out on the face of the Application and in the supporting affidavit of Boniface M. Kavuvi the Secretary General of the Claimant / Applicant.
3. The Claimant Applicant submits that the employees were served with letters of suspension dated 2nd June 2015 pending investigation into the causes of shrinkage which they alleged pointed at employees dishonesty and fraudulent activities.
4. The employees were to remain on suspension on half pay for two (2) weeks from 3rd to 17th June 2015.
5. The Claimant Applicant submits further that suspension of staff of a whole branch is a manifestation of bad labour practices which is outlawed under Article 41 of the Constitution.
6. That the suspension is in violation of the provisions of the Recognition Agreement and the CBA between the parties.
7. That no specific charges have been levelled against any of the employees, but Respondent has made a blanket allegation based on mere suspicion.
8. The period of two (2) weeks has since elapsed and the employees are still on suspension. The Respondent has contrary to Clause 31 of CBA extended the suspensions for an indefinite period vide a letter dated 16th June 2015.
9. The Respondent has failed and or neglected to meet the Claimant /Applicant to resolve the matter.
10. That the police have been involved in the investigations and no tangible evidence has come up against any of the employees. That the Court allows the Application and confirms the interim orders pending the hearing of the main suit.

Replying Affidavit

11. The Respondent has vide replying affidavit of Evelyn Maina, the Legal Officer of the Respondent opposed this Application.
12. The Respondent states that this matter ought to have been reported to the Ministry of Labour first for conciliation before bringing same to Court.
13. The Respondent while admitting the suspension has attached to the replying affidavit a Forensic Report by Sam & Associates Certified Public Accounts of Kenya in which a conclusion is made thus;

“from the analysis, it is certain that the company lost stock. However the actual point of stock loss cannot be established. It could be that the stocks were actually not delivered, whether they were delivered, whether they were delivered and stolen from the store, or whether they were picked from the shop floor. This is due to loop holes in the system especially the absence of documentation of movement of stocks in and out of the store, absence of security camera at the back entrance to the Branch and absence of regular inventory counts and reconciliations.”

Determination

14. It is the Court's considered view that the Claimant / Applicant has shown a *prima facie* case of unfair and just group victimization without any element of individual liability which is a classical case of unfair Labour practice.
15. The Claimant / Applicants has also demonstrated that it stands to suffer irreparable harm if the employees lose their jobs unlawfully and unfairly for no valid reason and without the Respondent following a fair procedure in an environment as is in Kenya today, where it is almost impossible for young persons to obtain a job.
16. It is in the interest of justice and indeed, the balance of convenience is in favour of granting this application pending the hearing and determination of the suit.
17. The Respondent is however not precluded from dealing with any individual cases of misconduct based on concrete evidence and in terms of the internal disciplinary procedures.
18. The Application is therefore granted in terms of prayer 3, by lifting forthwith the suspension of the ninety one (91) employees of the Beba beba Branch of the Respondent, pending the hearing and the determination of the main suit.
19. Costs in the cause.

Dated and Delivered at Nairobi this 6th day of November, 2015

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE