



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NO. 1258 OF 2013

NATIONAL UNION OF WATER AND SEWERAGE EMPLOYEES.....CLAIMANT

VERSUS

ABDUL LUSINGA AGONGA.....1ST RESPONDENT

TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY.....2ND RESPONDENT

RULING

By a Notice of Motion dated 8th August 2013 and filed in court the same day under certificate of urgency the applicant seeks the following orders;

1. THAT for the reasons of urgency to be recorded and as contained in the certificate of urgency the honourable court be pleased to certify this application urgent and service of the same be dispensed with in the first instance and be heard exparte.
2. THAT leave be granted for this application to be heard during the industrial court vacation.
3. THAT pending the hearing and determination of this application, the honourable court be pleased to issue a temporary injunction to restrain the 1st Respondent from forcefully entering and or trespassing into and or resuming duties and responsibilities as the Managing Director of the 2nd Respondent and or dismissing and or sacking and or declaring the members of the claimant union redundant or in any manner whatsoever interfering with the management of the 2nd respondent herein.
4. THAT pending the hearing and determination of this claim, the honourable court be pleased to issue a temporary injunction to restrain the 1st Respondent from forcefully entering and or trespassing into and or resuming duties and responsibilities as the Managing Director of the 2nd Respondent herein.
5. THAT the costs of this application be borne by the Respondents.

The 1st Respondent was served by way of an advertisement in the papers following an application by the Claimant. The 1st Respondent did not respond to the Claim and also did not attend court at the hearing of the application.

The second respondent did not file any response to the application either but was represented by Mr. Wanyama who supported the claimant's application.

The Claimant herein, who is a trade union representing employees of the 2nd Respondent is the applicant

in this application. The 1st Respondent is a former Managing Director of the 2nd Respondent. His appointment was revoked by Gazette Notice No. 7913 of 14th June 2013. The applicant alleges that the 1st Respondent created a lot of animosity among the applicant's members by threatening to dismiss the applicant's members and in reaction to the threats of dismissal the employees threatened to go on strike, and even to burn down the premises housing the 2nd respondent's head office. The applicant reported the dispute to the Minister for Labour but before any action could be taken the 1st Respondent's appointment was revoked by the Cabinet Secretary for Water, Environment and Natural Resources. The applicant alleges that the 1st Respondent has been attempting to forcefully resume duties as Managing Director of the 2nd Respondent and that this has raised tension in the 2nd Respondent's offices causing the workers to threaten to go on strike. The applicant is afraid that this will interrupt operations of the 2nd Respondent and adversely affect its members and their dependants and that the applicant's subscriptions are likely to be dismissed.

I have carefully read the claim filed by the applicant, the application and all the appendices.

First, there is no evidence of the 1st Respondent forcefully re-entering the premises of the 2nd Respondent to reclaim his seat. Secondly, I believe that should that happen there are law enforcement authorities who can deal with the issue satisfactorily. Thirdly, I do not see how this is a problem of the Claimant.

In my view it is the 2nd Respondent who should be concerned with the issue as it is its operations, its staff and its premises that would be under threat should the allegations by the Claimant be real. Lastly this court can not act on threats by employees to go on illegal strikes and commit criminal offences by burning office premises of their employer as a ground to issue the orders sought by the applicant. The Claimant should be in the forefront of enlightening its members of the consequences of the criminal actions that they are threatening and it cannot control them, it should file reports with the relevant law enforcement authorities.

This case is reminiscent of a mourner who is wailing more than the bereaved. In my opinion the bereaved here is the 2nd Respondent. If the 2nd Respondent found no reason to rush to court to seek orders against the 1st Respondent, I do not see how the applicant should feel more aggrieved to the extent of filing a dispute in court.

Finally, I cannot do justice to this case without making a pronouncement on the orders sought by the applicant.

The applicant seeks an injunction to restrain the 1st Respondent from forcefully entering and trespassing into and or resuming duties and responsibilities as Managing Director of the 2nd Respondent and dismissing or sacking and/or declaring the members of the Claimant redundant.

I find that the applicant has no proprietary interest or locus standi to seek such orders as it is neither the employer of the 1st Respondent or the owner of the premises it alleges would be trespassed upon should the 1st Respondent succeed in re-entering the premises and resuming his duties. I also find that the applicant has not shown that there is any real threat of dismissal of its members by the 1st Respondent who in essence does not even possess such powers following the revocation of his appointment.

I find that the applicant has not proved that it is entitled to the orders sought and dismiss the application.

Read in open Court this 11th day of February 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Awach, General Secretary for Claimant Union

Ogola h/b for Wandabwa for 1st Respondent

No appearance for 2nd Respondent