



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA

(BIMA TOWERS)

CAUSE NO. 247 OF 2014

OSCAR MURIMA TSUMA

JULIUS CHIRUNGA MAUNDU

CLAIMANTS

v

M.A. JAGANI AUCTIONEERS

RESPONDENT

RULING

1. The two unrepresented Claimants lodged a Memorandum of Claim against the Respondent on 29 May 2014 stating the issue in dispute as *non-payment of terminal benefits and failure to convert the old contract of employment under the former Employment Act 226 to the New Contract under the Employment Act 2007*.
2. Together with the Memorandum of Claim, the Claimants filed a Motion under certificate of urgency seeking an injunction to restrain the Respondent from terminating their contracts of employment and or dismissing them and costs.
3. The Respondent was served and it filed a replying affidavit to the motion and a Statement of Response to the Memorandum of Claim.
4. This ruling is in respect of the motion which was argued on 19 June 2014.

Claimants' case

5. The Claimants case is that they are employees of the Respondent and they have been demanding arrears of payments and that they are apprehensive that the Respondent would dismiss them or act in a manner prejudicial to them until their claim is heard on the merits.

Respondent's case

6. Mr. Ambwere for the Respondent opposed the Claimants application and relied on the replying affidavit of Mr. Mohamed Jaffer Ahmed Jagani.
7. Mr. Jagani deposed that the Claimants were helpers/casual labourers who are periodically called to help load/offload goods and not permanent employees.
8. He also submitted that the Respondent was only registered in 2010 (certificate of registration was annexed) and that Courts should be reluctant to force people to work together and that the application should be dismissed with costs.

Evaluation

9. The Respondent admits some tenuous form of employment relationship with the Claimants. Whether it is a piece rate type of relationship is not clear. Whether it has been reduced into writing or indeed whether there was need to reduce it into writing is at large.
10. The Claimants are lay persons and their pleadings cannot be held to high stringent standards like formal pleadings drafted by lawyers. In certain circumstances, parties are even permitted to approach Courts through informal documentation. The Claimants are seeking enforcement of their statutory rights.
11. The primary pleading is specific in what the Claimants are seeking (underpayments). The Claimants seek that the Respondent be stopped from dismissing them pending determination of whether they are entitled to the underpayments.
12. The Court must carry out a delicate balancing act. The best the Court can do with the material placed before it is to order maintenance of the status quo.
13. If the Claimants ultimately demonstrate that they were employees of the Respondent protected and entitled to the statutory rights of employees encapsulated in the primary labour statutes, their rights would have been preserved and if they fail the Respondent would have been vindicated.
14. This is a suitable Cause to be heard on an urgent basis and the Court will proceed to give directions forthwith.

Delivered, dated and signed in Mombasa on this 4th day of July 2014.

Radido Stephen

Judge

Appearances

Claimants

in person

Respondent

Mr. Ambwere instructed Ambwere T S & Associates