**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 202 of 2013**

**Kenya Scientific Research International Technical and**

**Institutions workers Union…….…....……..Claimant/Applicant**

**Versus**

**Sana Industries Co. Ltd……..…..…… Respondent**

## RULING

The applicant came to court vide a Notice of Motion dated 12th February, 2013 filed on the same date under a certificate of urgency. He prays for orders;-

1. **THAT** the Honourable Court certifies this application as urgent.

2. **THAT** the Honourable be pleased to issue an order to restrain the respondent from declaring the employees redundant.

3. **THAT** the Honourable Court be pleased to issue an order and direct the respondent to reinstate the sixteen (16) employees until the determination of this case.

4. **THAT** the Honourable Court be pleased to issue an order and direct respondent to pay the sixteen (16) employees the three days they are out of employment.

5. **THAT** the Honourable Court be pleased to issue an order and direct the respondent not to victimize, intimidate and harass employees until the determination of this suit.

And this is grounded on the following grounds;

1. **THAT** the entire employees had been set free to join, form and belong to a union of their choice through a successful access sort by Kenya Scientific Union under cause No. 1620 of 2012 where the court ordered and directed the respondent to allow the employee to participate in Union activities.

2. **THAT** the said Union made arrangements through the respondent and held about two meetings for recruitment exercise on 30th January, 2012 and 7th February, 2013 where the employees, Union officials and top managers held a joint meeting for the purpose of complying with the court orders but thereafter the respondent changed mind and hand-picked the sixteen (16) employees had already joined the said Union and told them not to report on duty the following morning on 8th February, 2013 without giving them a reason (sic.)

3. **THAT** if the respondent is allowed to stop the employees not continue work without apparent reasons is another way of diminishing the right of employees granted under the Law. If the respondent had apparent reasons, the respondent could have followed proper procedure in Law. **Furthermore**, the respondent who had an idea that these employees belong to a trade Union, the union or Area Labour office would have been informed for the stopping of these employees and the intention of stopping them work as the law requires. Employment act 2007 sections 35, 40 and 46 respectively (sic.)

4. **THAT** the respondent has denied the workers their freedom of Association and Violated the relevant sections of the law employment act 2007 40 and 45 respectively and **ILO** convention No. 87.

5. **THAT** if the orders cannot be granted then the respondent could victimize, intimidate and harass the employees.

The application is supported by the Supporting Affidavit of Peris Muthoni Karanu sworn on 12th February, 2013. The matter came for *ex-parte* hearing on 13th February, 2013 when the court made the following orders.

1. **That** this court certifies the matter as urgent and the same be heard in the first instance.

2. **That** this application be set for hearing on 20th February, 2013 *inter parties.*

3. **That** the claimant/applicant be and is hereby ordered to serve the application and the hearing notice to the respondent forthwith but not later than the close of the day on 15th April, 2013.

On 20th February, 2013 the matter would not be reached and the parties were ordered to take a hearing date in the court registry. The matter was ultimately placed for hearing on 25th March, 2013.

The issues in dispute according to the applicant are unlawful intention to declare the employees redundant (sic) and unlawful stopping of sixteen employees from duty. The applicant submits that the respondent has besides curtailing the rights of his employees from the enjoyment of prudent industrial relations as per the orders of court made on 23rd January, 2013 now terminated the employment of sixteen workers contrary to section 35, 40 and 47 of the Employment Act, 2007 and the **ILO** convention No. 87(sic).

In the Supporting Affidavit of the applicant aforecited the deponent avers at paragraph 2 that the respondent has stopped the services of sixteen (16) employees because they have joined the Union. This termination is without notification and also coupled with other complaints of sexual harassment, intimidation and forced overtime without pay.

It is also summited that the complaints arising hereof are as consequence of the applicant having successfully recruited union members pursuant to the orders of court made on 23rd January, 2013 which the respondent now wishes to frustrate.

In the cause of these proceedings, one, Cecily N. Mwangi, the General Secretary of the Kenya Union of Hair and Beauty Salon Workers Union filed a Notice to be enjoined as an interested party on grounds *inter alia* that it was involved in the hair and beauty industry and had recruited workers in this company. She later filed a notice to be disjoined as an interested party citing intimidation and harassment by the claimant/applicant which misconduct she begs the court to castigate.

Counsel for the respondent, Mr. Kimondo does not appear to have made a reply to the issues in dispute. He agrees with the timing of the implementation of the court orders of 23rd January, 2013 but contends that the current situation arose out of release of casual employees from employment in terms of their contracts of employment. There is nothing unusual in this, or at all.

He also submits that redundancy does not apply in the circumstances and neither is this proven by the claimant. That this application is an offshoot of the layoff of 8th February, 2013 which the claimant does not prove was made by the respondent. That other unions have undertaken recruitment and one of them is

now recognized.

The applicant on his part disagrees with the recognition agreement and deems the same a sham and submits that the respondent is trying to mislead the court. He further submits that on 19th March, 2013 the union purported to sign a recognition agreement but was chased away by the respondent's workers. That the purported recognition agreement is intended to defeat and frustrate the court orders of 23rd January, 2013.

The counter replying affidavit by the applicant/claimant reveals a sad industrial relations exercise on the part of the respondent. Whereas it is averred and submitted that the applicant has recruited 500 members as at 30th January, 2013, sixteen of these have had their services terminated for joining this union. Further, from the 8th March, 2013 the respondent has continued to lock out the applicant from recruiting members in Nairobi and Ruiru. He (respondent) continues to threaten and intimidate employees against being recruited into the union.

On 23rd January, 2013, this court issued clear orders of court dictating appropriate industrial relations exercise by the parties. All this time there appears to be defiance of these court orders. In evidence, the applicant wrote a letter marked Appendix III to the respondent headed ***Imminent Court Contempt*** in which he cites his sentiments that the respondent is frustrating, and derailing the implementation of the court order. In as much as the respondent denies the above, this appears a clear cut case of contempt of court.

The court cannot *suo moto* invoke issues of contempt in the circumstances. It requires the prompting of parties to this suit. The circumstances of this case call for an application in contempt of court proceedings but instead the court is requested to issue orders for;

(i) Reinstatement of the 16 workers pending determination of this suit.

(ii) Payment of the 16 employees for the three days they are out of employment.

(iii) Order and direct the respondent from victimizing intimidating and harassing her employees until the determination of this suit.

Does prayer No. 5 intimate that such victimization, intimidation and harassment of employees would be appropriate and affordable after the determination of this suit? *Drafters beware*!

The application before court is largely similar and a replica of the one determined by this court on 23rd January, 2013. Here, the court made clear orders and paid glaring tribute to the practice of appropriate industrial relations *inter parties*. These court orders have, in accordance with this application not borne fruits due to the transigiency of the respondent. What assurance does the court have that making further orders as prayed shall yield different results?

This court cannot be involved in an exercise in futility. It would be reinforcing its own contempt. I therefore decline to issue the orders as prayed and implore upon the applicant to, if interested, bring out the relevant application for applicable and appropriate orders with a view to having this matter thrashed once and for all.

Dated and delivered this **23rd** day of April**,** 2013.

**D.K. Njagi Marete**
**JUDGE**