



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 2098 of 2011

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT

VERSUS

DADHLEY INDUSTRIES LTD.....RESPONDENT

RULING

1. This is the ruling for the application dated 5th February 2013 brought by way of Notice of Motion under the provisions of Section 12 and 13 of the industrial Court Act. The application was through a certificate of urgency seeking exparte orders pending the main herein, the same being based on the grounds that the respondent had locked out members of the applicant namely;
 - a. Rafael Lokujuk
 - b. Onesmas Muthini,
 - c. Christopher Mwahili
 - d. Kasmir Nyarunda
 - e. Omesmus Mbinga
 - f. Peter Katuta
 - g. Mulwa Mutuko; and
 - h. Reuben Mwanja.
2. That the lockout was without any justifiable cause.
3. This application is based on the supporting affidavit of Justus Maina Otakwa and on the ground that this Court issued orders on 7th February 2007 compelling the respondent to comply with Section 48 of the Labour Relations Act and also orders restraining the victimization of applicant members. That the respondent has refused failed and neglected to comply with these orders and proceeded to lock out the above listed workers. That the respondent has also failed to remit Union deductions from unionized employees to the applicant.
4. The application was opposed by the respondent in their Replying Affidavit noting that the laid off workers are casuals and that the respondent had not locked out any permanent staff members of the applicant.

5. This application is based on orders previously issued by this Court on 7th February 2007 under the provisions of Section 48 of the Labour Relations Act that restrained the respondent from victimizing the applicant's members. That these orders issued in 2007 have not been complied with and the respondent has gone further and locked out 8 employees from their place of work. These facts are the basis of the grounds for the application and the same reiterated in the Affidavit of Justus Maina Otakwa.

6. I have taken time to peruse the entire file, all the documents filed and the correct application. There is no attachment relating to the Orders referred dated 7th February 2007. In any event the Claim herein was filed before this Court on the 15th December 2011 together with a similar application as the one before me. The Court granted interim orders pending the prosecution of the claim. That was on the 6th January 2012. The Claim has never been prosecuted.

7. The applicant being a large Union might have been in reference to another matter filed in 2007.

8. Even if there was an order issued on 7th February 2007, the Labour Relations Act only received assent on the 22nd October 2007 and commenced on 26th October 2007 way after the said order was granted. If there was such an order as of 7th February 2007 made under the Labour Relations Act, the same was invalid for all intents and purposes as the applicable law was not in force then and this law is not contemplated to act retroactively.

9. The application of 15th December 2011 and this application raise the same issues in the Claim and by dealing with the orders sought will be in essence disposing the entire suit in an interlocutory application yet the gist of the matter relate to the recognition agreement between the parties herein.

I will therefore decline the application as filed and direct the parties to set down the matter for hearing where all issues herein will be addressed to a conclusion. Costs will be in the motion.

Read in open Court this 10th day of April 2013.

M.W. Mbaru
Judge

Before:

Court Clerk

Claimant.....

Respondent.....