



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1641 of 2012

BENARD NYANYUKI NYAKINA AND 280 OTHERSCLAIMANTS/APPLICANTS

VS

POLYSACK LIMITEDRESPONDENT

RULING

The issue in dispute is unfair labour practices.

There are two applications being considered before this court. The first application was filed by the applicant Claimant herein and is the application dated 13th September 2012 filed under Section 11 and 12 of the Industrial Court Act, Rules 16, 19, 20, 27 and 28 of the Industrial Court Rules, Section 37 and 40 of the Employment Act and all the enabling provisions of the law.

The claimant seeks the following orders:

1. THAT this application be certified urgent and be heard exparte in the first instance.
2. THAT pending the hearing and determination of this application, the honourable court be pleased to issue temporary injunction to restrain the Respondent from compelling and/or forcing the claimants into entering and/or signing into temporary employment contracts with the respondent and/or the new company by the name PREMIER GROUP LIMITED and or dismissing or declaring the claimants redundant.
3. THAT pending the hearing and determination of this claim, the honourable court be pleased to issue a temporary injunction to restrain the Respondent from compelling and or forcing the claimants into entering and or signing into temporary employment contracts with the respondent and or the new company by the name PREMIER GROUP LIMITED and or declaring the claimant's redundant and or dismissing or declaring the claimants redundant.
4. THAT the costs of this application be borne by the Respondent.

The application was based on grounds on face of application which in a nutshell the claimants aver that they were all employees of the Respondent having worked with the Respondent for more than one year. The claimants state that they have been subjected to short term contracts of 3 to 6 months by the Respondent though they have been in continuous employment. The claimants claim that the Respondents now want to introduce fresh contracts in the name of a new company **Premier Group Ltd** who is not known to the claimants and are now compelling the claimants to sign them and then threatening to dismiss the claimants if they fail to do so. The Claimants claim that they had lodged their complaints

about the unfair labour practices by the Respondent and asked the respondent to react and confirm by complying with the law. The claimants further aver that they were declared redundant by the Respondent for 4 days without pay but resumed work on 6th July, 2012, for one day and proceeded on strike on 7th and 8th July, 2012 for two days which resulted into return to work formula arbitrated by the Ministry of Labour.

The claimants claim that on 9th July, 2012 they resumed work but the respondent refused to implement the resolutions contained in the return to work formula but instead started victimizing, harassing, intimidating and coercing some of the employees.

The respondent filed their replying affidavit to this application opposing this application. They content that they usually engage employees on 6 months contracts which are renewed upon expiry at the insistence of the parties and dependent on availability of work.

The Respondent further aver that the claimants had actually raised some complaints which they addressed through the District Labour Officer and Officer In charge of Police Station. The workers were advised to resume work but they defied and went on an illegal strike. After 1 hour's notice, the Respondent issued letters of dismissal to all shift A workers who were not at their work station. The list of the said workers was purportedly mounted on the notice board and was annexed to the Respondents pleadings.

The Respondents aver that by the time the claimant's application was coming up for hearing on 20th September, 2012, majority of the workers had already been summarily dismissed for lawful cause a fact they failed to disclose when seeking interim orders.

As the interim orders were in force where this court enjoined the Respondents from compelling and or forcing the claimants unto entering and or signing into temporary employment contracts with the Respondent and or the new company by the name Premier Group Limited and or dismissing or declaring the claimants redundant; the Respondent filed yet another application dated 27th September 2012. They filed this Notice on Motion under Section 11, 12, 16, 20 and 21 of the Industrial Court Act, rule 16(8)(a) of the Industrial Court Rules, Section 44 of the Employment Act and all other enabling provisions of law.

They came seeking orders:

1. THAT the application be certified as urgent, service of the same be dispensed with and it be heard *ex parte* in the first instance.
2. THAT this Honourable court be pleased to review, vacate and/or set aside the interim orders granted on 20th September, 2012 against the Respondent/Applicant.
3. THAT this Honourable Court be pleased to issue an order restraining and barring the claimants whose names are annexed to the supporting affidavit hereto as having been summarily dismissed and any other employee who is not willing to work for the respondent/applicant's from blocking and/or barricading the respondent/applicant's gate, threatening, intimidating and using actual physical harm against employees, customers and job seekers on the respondent and their premises forthwith.
4. THAT this Honourable Court be pleased to order parties herein to maintain the status quo that was obtaining as at 20th September 2012 when the claimants' application dated 13th September 2012 came up for hearing and the suit herein do proceed for hearing on its own merit.
5. THAT costs of this application be provided for.

The court declined to grant any interim orders on this application and ordered that this application be served upon the claimants herein and that the two applications i.e. one of 13th September, 2012 and one of 27th September, 2012, be consolidated and heard together. The Respondent in their application dated

27th September 2012, had averred that the interim orders granted on the application of 13th September, 2012 had led to paralysis of the Respondents operations as the dismissed workers had taken advantage of this order and barricaded the respondent's premises preventing workers willing to work from going to work. The Respondents urged court to review, vacate and set aside the interim orders granted on 20th September 2012 against the Respondent/Applicant.

The gist of these two applications is the forced signing of new contracts by the claimants in the name of a Company they don't understand called **Premier Group Limited**. The Respondent have not in their replying affidavit explained who this company is. The other issue is the purported dismissal of some claimants those said to have been on Shift A who failed to be at their work place by 8.00 a.m.

The whole action of dismissing workers by putting their names on a notice board begs some questions which also need to be advanced. As the Respondents urge court to order the "dismissed" workers out; the legality or otherwise of the whole action is a matter which will have to be resolved in the main suit.

The issue of signing new contract with Premier Group Ltd is also a matter to be resolved in the main suit after understanding who Premier Group Limited is and their relationship with the Respondent.

Having stated as above and considering issues which have been raised by both parties which touch on unfair labour practices, I order as follows:

1. THAT the Respondent is restrained from compelling and or forcing the claimants into entering and or signing into temporary employment contracts with the respondent and or the new company by the name PREMIER GROUP LIMITED and or dismissing or declaring the claimants redundant, pending the hearing and determination of this suit.
2. The Claimants do resume duty at the Respondents premises with immediate effect.
3. The claimants who are not willing to work for the Respondent be restrained forthwith from blocking and/or barricading the Respondent/Applicants gate, threatening, intimidating and using actual physical harm against the employees, customers and job seekers of the respondent and from trespassing into the respondent/applicants property and premises forthwith.
4. The parties are ordered to maintain industrial peace pending the hearing and determination of this suit.
5. Costs in the cause.

Dated, signed and delivered this 5th day of October 2012.

Before Court Clerk Rachel Gichuki, Rakoro holding brief for Mageto for the Claimant and Mr. Njiru for the Respondent.

HELLEN WASILWA

JUDGE