



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CIVIL APPLICATION 41 OF 2009

**KENYA UNION OF PRINTING, PUBLISHING PAPER MANUFACTURERS & ALLIED
WORKERS.....APPLICANT**

VERSUS

**CITY PRINTING WORKS (KENYA)
LIMITED.....RESPONDENT**

J U D G M E N T

1. The application coming up is the Notice of Motion dated 19/01/2009 brought under Section 3A of the Civil Procedure Act, Order XXI and Order L Rule 1 of the Civil Procedure Rules, the Trade Disputes Act, Cap 234 Laws of Kenya and rules made thereunder and all enabling provisions of the law. The application seeks **ORDERS:-**

1. ***THAT the Award made by the Industrial Court on 6th May, 2005 in Cause No. 121 of 2003 as consolidated with Cause No. 93 of 2002; Kenya Union of Printing, Publishing, Paper Manufacturers & Allied Workers –vs- City Printing Works Limited be adopted as a Judgment and Decree of this Honourable Court.***

2. ***THAT the Respondent do pay Kshs.7,232,791.35 (principal sum) to the claimants in Cause No. 121 of 2003 as consolidated with Cause No. 93 of 2002 in terms of the Award made on 6th May, 2005.***

3. ***THAT the Respondent do pay interest on the principal sum of Kshs.7,232,791.35 at court rates from 18th January, 2008 until payment thereof in full.***

4. ***THAT the Applicant be at liberty to execute the Judgment and the resulting Decree.***

5. ***THAT the costs of this application be provided for.***

2. The application is based on 7 grounds on the face thereof, namely:

1. ***THAT the Applicant, on behalf of its claimant members, lodged trade dispute in Industrial Court against the Respondent, Cause No. 121 of 2003 and Cause No. 93 of 2002; Kenya Union of Printing, Publishing, Paper Manufacturers & Allied Workers –vs- City Printing Works Limited, which***

disputes were consolidated, heard and determined together.

2. ***THAT upon hearing of the disputes and by its Award made on 6th May, 2005 in Cause No. 121 of 2003 as consolidated with Cause No. 93 of 2002; Kenya Union of Printing, Publishing, Paper Manufacturers & Allied Workers –vs- City Printing Works Limited, the Industrial Court found in favour of the Applicant and its claimant members and ordered the Respondent to pay the claimants therein, their respective dues as follows:-***

(a) ***All arrears of salary and housing allowance accrued under the Collective Bargaining Agreements (CBAs) between the FKE Printing Trades Group and the Applicant Union between years September 1995 and January 2001;***

(b) ***All outstanding annual leave and leave traveling allowances;***

(c) ***For the claimants who had not completed ten (10) years of service with the Respondent, salary equivalent to fifteen (15) days pay of the last payable salary in accordance with the then latest CBA for each completed year of service;***

(d) ***For the claimants who had completed more than ten (10) years of service, salary equivalent to twenty (20) days pay of their last payable salary in accordance with the latest CBA for each completed year of service; and***

(e) ***Three (3) months salary based on the claimants' latest monthly salary by way of compensation for unlawful redundancy.***

3. ***THAT pursuant to the terms of the Award, the aggregate sum payable to the claimants on whose behalf the Applicant had lodge (sic) the Causes aforesaid is Kshs.7,232,791.35, exclusive of interest accruing thereon from the date the Award was published.***

4. ***THAT the Award was published in the Kenya Gazette on 18th January, 2008 under Gazette Notice No. 311 appearing in Volume CX-No.6.***

5. ***THAT in utter disregard of the Award, the Respondent has failed, refused and/or declined to make any payment to the claimants.***

6. ***THAT the Industrial Court Award is final, conclusive and binding upon the Respondent.***

7. ***THAT it is only fair and in the interests of justice that the Award be recognized and adopted as Judgment and Decree of this Honourable Court to enable the Applicant to pursue enforcement thereof on behalf of its members claimants.***

3. The Supporting Affidavit dated 19/01/2009 is sworn by ISAAC WAMBOYE and in it, he depones to the following matters, *inter alia*,

(i) ***that the parties have ventilated their dispute before the Industrial Court in Cause Nos 121 of 2003 and 93 of 2002, which were consolidated and heard together***

(ii) ***that both parties participated in the proceedings which ended in favour of the Applicants herein in the following terms:-***

(a) ***All arrears of salary and housing allowances accrued under the Collective Bargaining Agreements (CBAs) between the FKE Printing Trades Group and the Applicant Union between years September 1995 and January, 2001;***

(b) ***All outstanding annual leave and leave traveling allowances;***

(c) *For the claimants who had not completed ten (10) years of service with the Respondent salary equivalent to fifteen (15) days pay of the last payable salary in accordance with the latest CBA for each completed year of service.*

(d) *For the claimants who had completed more than ten (10) years of service, salary equivalent to twenty (20) days pay of their last payable salary in accordance with the latest CBA for each completed year of service; and*

(e) *Three (3) months salary based on the claimants' latest monthly salary by way of compensation for unlawful redundancy.*

(iii) *that the amounts payable to the claimants, totaling Kshs.7 232 791/35 have not been disputed by the Respondents*

(iv) *that the award was published in the Kenya Gazette vide Gazette Notice No. 311 appearing in Volume CX-No.6 and that since then the Respondent has failed and/or refused to make the payment;*

(v) *that the award made by the Industrial Court is final, conclusive and binding upon the Respondents.*

4. The application is opposed. The Replying Affidavit, dated 13/03/2009 is sworn by **SAMUEL GATHEGI**, a director of the Respondent Company. He depones to the following matters:-

(i) *that there is no valid Collective – Bargaining Agreement (CBA) or recognition between the Respondent and the Applicants*

(ii) *that in the absence of such an agreement the award or decision of the Industrial Court is a nullity ab initio*

(iii) *that there is no valid award that can be enforced*

(iv) *that the application is fatally defective for being premised on a repealed statute – the Trade Dispute Act, Cap 234 (repealed)*

(v) *that this court has superior jurisdiction to that of the Industrial Court and can question and review an award or decision of the Industrial Court*

(vi) *that the Applicants have not demonstrated how the sums they now claim have been arrived at*

(vii) *that the Respondents are not indebted to the Applicants in the sums claimed or at all.*

5. Each party made oral submissions which substantially reiterated the averments in the respective pleadings. Regarding allegations that the Applicants claim is brought under a repealed statute, Mr. Njoroge for the Applicants' argues that the claim in the Industrial Court was commenced and concluded before the new Labour Relations Act came into force on 27/10/2007. That being the only point of contest, Mr. Njoroge asks the court to enter judgment for the Applicants as prayed.

6. **Mr. Mwaura of Mboya & Wangondu Advocates** argues that there is no valid Collective Bargaining Agreement between the parties that would form the basis for the Applicants' claims. He also refers to the evidence adduced before the Industrial Court which was to the effect that the Respondents were not obligated to comply with the CBA since they were not Members of Federation of Kenya Employers (FKE).

7. It is not in dispute that the Industrial Court heard and determined causes Nos 121 of 2003 and 93 of 2001 and found in favour of the Applicants. The issue for determination is whether that award, dated

6/05/2005 is invalid. I have read through the proceedings at the Industrial Court. I have also read the award. The court found that the Respondents in failing to join the FKE Group surrendered its right to negotiate terms appropriate to its economic conditions and was thus bound by the blanket agreement with the Claimant union in 1979. Secondly, the court found that the Respondent terminated the Respondent's services without paying them redundancy dues in circumstances which clearly showed that the termination was through redundancy. The court also made a number of observations that were adverse to the manner in which the Respondent conducted its case before it, essentially saying that the Respondent did not adequately deal with the issues raised by the Applicants.

7. I have now carefully considered the application and the grounds in support thereof. I have also considered the law and cases cited. I have also considered the pleadings and the award of the Industrial Court. In my view, the grounds raised by the Respondent in opposition to the Applicant's application are the same grounds that were or ought to have been raised and ventilated before the Industrial Court. I therefore find no merit in having the same issues raised at this stage. The Industrial Court gave reasons as to why it thought the Respondents were liable, and I am in agreement with those findings. Further, the Respondents have not offered an alternative to the amounts awarded to the Applicants. The mere allegation that the Applicants have not given a basis for their figures does not; in my view invalidate the award made by the Industrial Court. In any event, the award was published in the Kenya Gazette way back on 18/01/2008. The Respondents did not raise a voice until the Applicants brought this application to court.

8. In the circumstances, I am satisfied that the Applicant's application has merit. Accordingly I order

(1) That the Award made by the Industrial Court on 6th May 2005 in Cause No. 121 of 2003 as consolidated with Cause No. 93 of 2002; Kenya Union of Printing, Publishing, Paper Manufacturers & Allied Workers –vs- City Printing Works Limited be and is hereby adopted as a Judgment and Decree of this Honourable Court.

(2) That the Respondent do pay Kshs. 7 232 791/35 (principal sum) to the claimant in Cause No. 121 of 2003 as consolidated with Cause No. 93 of 2002 in terms of the Award made on 6th May 2005.

(3) That the Respondents do pay interest on the principal sum of Kshs. 7 232 791/35 at court rates from 18th January 2008 until payment thereof in full.

(4) That the Applicant be at liberty to execute the Judgment and the resulting Decree.

(5) That the Respondents be and are hereby condemned to pay the costs of this application.

It is so ordered.

Dated and delivered at Nairobi this 24th day of July 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

..... For the Applicant

.....For the Respondent

..... - court clerk