



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 1517 OF 2018

BETWEEN

KENYA ENGINEERING WORKERS UNIONCLAIMANT

VERSUS

STANDARD ENGINEERING WORKS LIMITED.....RESPONDENT

Rika J

Court Assistant: Emmanuel Kiprono

Mr. Araka, Industrial Relations Officer, for the Claimant

D.M. Kyallo & Associates, Advocates for the Respondent

JUDGMENT

1. The Claimant initiated this Claim, on behalf of 3 Members [Grievants], who were employed by the Respondent.
2. The Grievants are Simon Macharia, Joseph Kariuki Ng’ang’a, and Mary Mueni Mbithi.
3. The Grievants received from the Respondent, notices of redundancy, all dated 13th June 2018. They were advised that the business was low and would not be able to continue sustaining them, in employment. ‘‘ We therefore regret to inform you that tomorrow, you will cease to be an Employee of Standard Engineering Works Limited... the Company is committed to clear all your pending dues in due cause’’ The letters are signed by Respondent’s Administration Manager, Stanley M. Kyengo.
4. On 23rd July 2018, Kyengo tabulated Grievants’ dues as shown in Claimant’s exhibit 2. Simon Macharia was offered a total of Kshs. 829,837; Joseph Kariuki Ng’ang’a Kshs. 1,290,973; and Mary Mueni Mbithi Kshs. 709,228. The payments were subject to P.A.Y.E liability.
5. The Claimant states, despite having terminated the Grievants’ contracts through redundancy, having tabulated their dues and promised to pay, the Respondent has not to-date paid the Grievants their redundancy dues.
6. On 7th August 2018, the Respondent wrote to the Claimant, undertaking to pay the tabulated dues, in 5 monthly instalments. This was not honoured.
7. The Parties have, at the initiative of the Court gone through conciliation at the Ministry of Labour, without settlement.
8. The Claimant prays that the Grievants are paid their redundancy benefits in lump sum.
9. The Respondent filed a Statement of Response dated 17th October 2019. It is conceded that the Grievants were Employees of the Respondent. It is the position of the Respondent that the tabulations made with regard to Grievants’ redundancy benefits above, were made

by the Respondent in error. They were based on an unregistered CBA. There is no CBA between the Parties herein. There is no Recognition Agreement. Any proposed settlement was on without prejudice basis, and is inadmissible before the Court. The Respondent has always been willing to negotiate, but the Claimant has not. The Respondent urges the Court to dismiss the Claim.

10. The Respondent filed a Witness Statement of Stanley Kyengo, dated 17th October 2019. The Respondent also exhibits a copy of CBA between the Claimant and the Umbrella Minor Engineering Group of Federation of Kenya Employers. The copy is undated and unsigned.

11. The Claimant presented one of the Grievants, Simon Macharia, who gave collective evidence on 21st January 2021. He restated the contents of the Claimant's Pleadings. They received instalments of Kshs. 70,000 [the 2 men], while Mueni received about Kshs.80,000. The Grievants were not party to registration of the CBA.

12. The Respondent did not adduce evidence, when the matter was scheduled for hearing of its case.

The Court Finds: -

13. The Respondent relied on the current CBA, in computation of Grievants' redundancy packages. Exhibit 4 of the Claimant's documents is a copy of the CBA. It is dated 10th August 2018. It is signed by all the Parties. What the Respondent has exhibited, is the same CBA but before its execution. The Court does not think that the tabulations made by the Employer about 2 weeks earlier, can be undone only on the ground that the CBA was not at the time executed. The Respondent was aware of the CBA pending execution, and relied on what the Parties had already negotiated and settled on.

14. Even assuming the CBA was not executed or registered at the time the Respondent made its tabulations, the figures the Respondent came up with are consistent with Section 40 of the Employment Act. They need not be supported by any CBA. They consist severance pay, salary arrears, notice, salary for days worked, pro-rata leave – all within the standard redundancy payments under Section 40 of the Employment Act. There are no items entirely hinged on the CBA. The benefits are standard statutory payments, which would be paid with or without a CBA.

15. The presence or absence of a valid CBA, is neither here nor there.

16. On Recognition, the Court notes that the Respondent addressed correspondence on redundancy to the Claimant Union. The Claimant is the Union the Respondent opted to engage in throughout. If there is Recognition Agreement or not, is not an issue before this Court. It is sufficient that the Respondent engaged the Claimant as the relevant Union in the dispute.

17. The Respondent conceded liability, computed benefits and proceeded to make initial payments. It then informed the Claimant of its difficulty in making payments and proposed to pay in 5 Instalments. It was not able to pay, and resorted to the unfortunate position, casting doubt on the CBA and Recognition Agreement. This is unacceptable.

18. The Claimant has established that the Grievants are owed the sums claimed.

IT IS ORDERED: -

a. The Claim is allowed.

b. The Respondent shall pay to the Grievants, through the Claimant:

I. Simon Macharia – Kshs. 829,837.

II. Joseph Ng'ang'a – Kshs. 1,290,973.

III. Mary Mueni – Kshs. 709,228.

Total...Kshs. 2,830,038.

c. The amount shall be paid less received by the Grievants, and less P.A.Y.E.

d. Costs to the Claimant.

e. Interest allowed at the court rates from the date of computation- 23rd July 2018, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 25TH FEBRUARY 2022.

JAMES RIKA

JUDGE