



Kenya Chemical Workers Union v Kenya Flexogravure Limited (Cause E021 of 2022) [2022] KEELRC 4047 (KLR) (22 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 4047 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E021 OF 2022
HS WASILWA, J
SEPTEMBER 22, 2022**

BETWEEN

KENYA CHEMICAL WORKERS UNION CLAIMANT

AND

KENYA FLEXOGRAVURE LIMITED RESPONDENT

RULING

1. The application before me is the claimant's notice of motion dated June 20, 2022 which seeks the following orders:
 - a. That the application be certified urgent and service be dispensed with in the first instance.
 - b. That pending the hearing and determination of this suit, an interlocutory injunction be issued restraining the respondent from effecting, continuing and/or implementing in any manner whatsoever, anything incidental to or related to the redundancy notice dated 30th, May, 2022 that is issued to the claimant's members. In particular, and for great certainty, the respondent be restrained from effecting and /or implementing in any manner whatsoever, any of its intention contained in its communication dated May 30, 2022 to the claimant on intended redundancy pending the determination of this suit.
 - c. That pending the hearing and determination of this suit, an interlocutory injunction be issued restraining the respondent from by passing the claimant and directly engaging the claimant's members regarding any of the issues contained in its redundancy notice dated May 30, 2022.
 - d. That the honourable court be pleased to grant the applicant costs of the application.
2. The application is premised on the grounds set out in the body of the motion and the supporting affidavit sworn by Peter Ouko Onyango, the claimant's National General Secretary, on the June 20, 2022. In the said affidavit the affiant avers that its members, who are employees of the respondent



- received a redundancy notice dated May 30, 2022, that is to take effect on the May 31, 2022, a day notice that did not give the claimant's members room for any negotiations.
3. It is contended that neither the union nor its members were served with any notice prior to the one-day notice of May 30, 2022, which was served in violation of the procedure of redundancy provided for under section 40 of the [Employment Act](#) as read with clause 16 of the CBA.
 4. The claimant avers that there was no criteria used in the selection of the 12 employees who were declared redundant. Thus, the entire process was illegal and unfair as provided for under the law.
 5. It is the claimant's case that the employees of the respondent who were declared redundancy, were instructed to each sign an irrevocable letter of withdrawal from the claimant union in presence of the respondent's director and legal officer, Mr Adams Maiyo advocate, without giving them the benefit to understand what they were signing. It is stated that the signing of the letter was a requirement before any of the employees was given their terminal dues.
 6. Prior to instructing the said grievants to sign the letter of withdrawal from the union, the respondent had signed a cheque of Kshs 2, 546,571, addressed to the claimant's union, being the terminal dues of the 12 employees, who had been declared redundant.
 7. It is stated that the respondent has on various occasion complaint of its female staff, as they sought maternity leave and the move to declare them redundant was a clear indication of discrimination against the respondent's female employees.
 8. In response to the application, the respondent filed a replying affidavit deposed upon on July 18, 2022, by Mahindra Chandulal Patel, the respondent director.
 9. The affiant states that the claimant does not have *locus standi* to bring this suit on behalf of its former employees on the basis that the collective bargaining agreement (CBA) entered between them on the July 17, 2013 lapsed on the April 30, 2015 as rightfully held in the Nairobi ELRC Case number 181 of 2013: *Kenya Commercial Workers Union V Kenya Flexogravure Limited*.
 10. It is the affiant's position that the consent order of the parties dated July 29, 2013 agreed *inter alia* to have the CBA operate for only two years which operation lapsed on or about April 30, 2015 by effluxion of time, and without any extension of the same the claimant cannot place any reliance on an expired CBA.
 11. The respondent's affiant avers that the said consent orders was adopted as order of the court and since it was never reviewed, the same stand valid to date.
 12. He states that even if the said CBA was still active, it provides at clause 16 that upon redundancy the employer to pay the employee; one month pay notice, payment of all wages or remuneration due, *pro-rata* leave, severance pay which is 25 days' pay for employees who had worked for less than 6 years and 30 days' pay for employees who had worked for more than 6 years. Similarly, that the respondent upon declaring the stated employees redundant paid them; May salary, one-month salary *in lieu* of notice, travelling allowance and severance pay for 30 days for the years worked, Therefore that the respondent duly complied with the law even when the CBA was no longer operational.
 13. It is the respondents assertion that the process was voluntary and all those who expressed interest in leaving its employ upon flaunting the idea, were given their terminal dues and let go.
 14. He states that the application and the entire suit is misconceived, vexatious, brought in bad faith and therefore should be struck out *ex debito justitiae*.



15. The claimant filed a supplementary affidavit in response to the replying affidavit on the July 27, 2022, reiterating the contents of its supporting affidavit and in addition states that they have authority to bring this suit on behalf of the grievant, it being the grievants union, having been recognized by the respondent and entered into a collective bargaining agreement(CBA).
16. On the allegation that the CBA lapsed after two years on April 30, 2015, the claimant referred the court to clause 29 of the CBA which provides for operation of the CBA for two years and an automatic extension and unless otherwise mutually agreed between the parties which was not the case herein. He maintained that the CBA is still active and not obsolete as alleged by the respondent. Further that the allegation that the issue with regard to implementation of the CBA was settled, is far from the truth as the matter is still active in court under cause number 127 of 2016 and scheduled for a mention on the October 3, 2022.
17. The claimant's deponent avers that the failure to engage the respondent's lawyers is attributed to the fact that the respondent kept changing advocates which they could not keep truck of. In any case that the issues were raised with the respondent who ought to have raised them with their advocates.
18. The claimant states that their members who were declared redundant were not paid in accordance with the law and that the tabulations of the dues paid was not shared with them. Furthermore, that the allegations that the employees left on their volition is not true and on the contrary that they were forced to withdraw from the union before being paid their terminal dues.
19. The claimant prayed for the suit and the application to be heard on merit and the issues raised therein be adjudicated upon by the court to meet the ends of justice.
20. Direction were taken for the application to proceed by way of written submission. The applicant filed on July 27, 2022, however there were no submissions on record for the respondent.

Applicant's submissions.

21. The applicant submitted that the way in which the redundancy process was conducted was contrary to provisions of section 40 of the Employment Act. It was argued that the fact that neither the union nor its members were served with any redundancy notice was in violation with section 40, 41, 43 and 45 of the Employment Act as well as article 2 and 3(20) of the ILO convention number 87.
22. It was submitted further that, even if the grievants have collected their des, the same was underpaid and the respondent should be compelled to pay the difference in addition to maximum compensation for filing to adhere to legal procedure on termination of employees on account of redundancy.
23. I have examined the averments and Submissions of the parties filed herein. In this application, the applicants sought for orders to stop a redundancy which was scheduled to take place on 31/5/2022.
24. No interim orders were issued when the applicants appeared in court on 23/6/2022 as the orders being sought had been overtaken by events.
25. What remains is for the court to determine whether the redundancy was fair or not and which issue can only be determined in the main claim.
26. I will issue no orders now and direct that the parties proceed with the main claim.
27. There will be no orders of costs.

RULING DELIVERED VIRTUALLY THIS 22ND DAY OF SEPTEMBER, 2022.

HON. LADY JUSTICE HELLEN WASILWA



JUDGE

In the presence of:-

George Gwako for Claimant – present

Maiyo for Respondent – present

Court Assistant - Fred

