



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO 6 OF 2020

KENYA BUILDING CONSTRUCTION /TIMBER AND

FURNITURE INDUSTRIES EMPLOYEES UNIONCLAIMANT

VERSUS

RAIPLY WOODS (K).....1ST RESPONDENT

WILSON K. KPLIMO MAIYO.....2ND RESPONDENT

RULING

1. By a Motion dated 27th January, 2020 the applicant sought orders among others that the court issues interim orders restraining the 1st respondent from unlawfully terminating the Claimant's/Applicant members employment in disguise of redundancy while outsourcing cheap labour.
2. The application was brought on the grounds among others that the 1st respondent ignored communication from the Union yet members continued to be unlawfully terminated from employment. Further that the 1st respondent used the 3rd respondent to outsource for cheap labour . And that the 1st respondent continued to issue the Claimant's members with redundancy notices.
3. The application was further supported by the affidavit of the Secretary General of the Claimant Union, one George Moseki Nyangweso who deponed on the main that: -
 - i. THAT the 1st defendant is a member of the CBA where the Company is bound by the rules and Regulations of the CB.
 - ii. THAT the defendant herein has neglected all the communication from our offices concerning the workers by abusing the law and unlawfully terminating the workers employment.
 - iii. THAT on or about the year 2018 June when it came to the knowledge of the Union that the 1st defendant has started to retire workers prematurely, we wrote to them vide our letter dated 1/06/2018 which was copied to the Permanent Secretary. Cabinet Secretary, Ministry of Labour, Secretary FKE (Federal Kenya Employees and the Chairman Timber Industries Employees Association.
 - iv. THAT on or about 28/5/2018 an agent of the 1st defendant and myself convened a meeting at the Labour office where the Labour Officer made her findings by supplying us with a certificate of unresolved issues dated 31/10/2019.
 - v. THAT the 1st defendant Raiply Wood (k) Ltd has flouted the terms of the negotiated CBA of 30th June, 1989 as agreed where he is a member.
 - vi. THAT the 1st Respondent has further issued many of the workers with redundancy letters without involving the Union and without following the procedure as per Section 40 of the Employment and Labour Relations Act 2007 as captured in paragraph 17 of the CBA.
 - vii. THAT the 1st defendant has decided to engage employees on contract after laying down the permanent employees on account of redundancy through outsourcing by the 3rd Defendant.
 - viii. THAT when the 1st Defendant continued outsourcing for contract employees, we wrote a letter to the County Labour Officer, Eldoret dated 26.11.2019 which has not been responded to date.

ix. THAT the County Labour Officer has not visited the scene to address the issue at hand giving the 1st Respondent a chance to continue flouting the law.

4. The respondent filed a replying affidavit through one, Joachim Muli Kimoja who deponed in the main that: -

i. THAT I am an employee of the 1st Respondent herein designated as the Human Resource Manager hence competent to swear this affidavit.

ii. THAT the alleged unlawful termination of the Claimants members from employment by the 1st Respondent is not true as the employees in issue have been terminated on account of redundancy in line with clause 17 of the CBA.

iii. THAT vide a letter dated 11th June, 2018 the 1st Respondent informed the Claimant of its intention to terminate most of the employees on account of redundancy following the moratorium on logging in public and community forests by the government.

iv. THAT the decision to lay off some of the 1st Respondent's employees due to the ban on logging by the government was reached after involving all relevant stake holders, the Claimant included.

v. THAT vide a letter dated 16th July, 2018 the Claimant while making reference to the meeting of the same day between the its representatives and the 1st Respondent representatives, it requested the 1st Respondent to retire the employees who were above the age of 47 years and those below the age of 47 years be allowed to retire and be paid full benefits as per the CBA.

vi. THAT furthermore, the Claimant vide a letter dated 2nd September, 2019 the Claimant wrote to the 1st Respondent and stated thus "following the current situation in the industry, it is clearly seen and understood that there is no work for these employees being issued with notices." It is therefore crystal clear that the Claimant was aware that there was no work for the said employees due to the ban on logging.

vii. THAT it is not and has never been the intention for the 1st Respondent to lay off any of its employees but the prevailing situation is beyond the 1st Respondent's control.

5. The applicant filed a response to the Replying affidavit in which he stated among others that:

i. THAT the contents of the replying affidavit are false and misleading to this Honourable Court.

ii. THAT in reference to the document marked as "JKI" by the respondents it is clear that the person/workers who were to be laid off on account of redundancy are around 300 (Three hundred) workers but the respondent has taken advantage and laid off workers with the disguise of redundancy.

iii. THAT the Claimant unanimously agreed with the 1st Respondent to retire employees equivalent to the number opted to be exited as per his letter of 11th June, 2018 which he effected and completed as per the attached list.

iv. THAT the decision by the 1st Respondent to lay off some of his employees following the ban of logging by the Government was to be reached, after involving all the relevant stakeholders including the County Labour Office as stated by the law. But the same was not complied with.

v. THAT the 1st Respondent apart from the **300 Labour Force** that was agreed upon to be affected in 2018, he never notified the Claimant prior to his intention for a further additional redundancy of excess Nine Hundred and **Twenty-Eight (928)** employees he effected from 1st January 2020 to date whose case is registered with this Honourable Court.

vi. THAT the 1st Respondent is hiding under redundancy and laying down permanent workers then later employing them under contract as per the documents attached and **marked GMN "H" and GMN "1"** to the Supporting Affidavit dated 27th January, 2020.

6. In the final submissions, only the respondent submitted in the main that terminating the Claimant's members was done on account of redundancy and in line with clause 17 of the CBA. The 1st respondent clearly informed the Claimant of the intention to render its employees redundant following the moratorium on logging in public and community forests by the government.

7. According to Counsel, it was clear to the Claimant that following the ban on logging by the government, there was no work. Counsel further submitted that the law was clear that an employer cannot be denied a right to reorganization or declaring a redundancy if the situation arises so long as the employer follows the law as was done in the respondent's case.

8. The complaint by the Claimant was that the respondent embarked on redundancy without contacting them and in contravention of the CBA and Section 40 of the Employment Act. The Claimant further complained that the respondent was outsourcing cheap labour after declaring its members redundant.

9. The Claimant however in a letter dated 2nd September, 2019 addressed to the respondent (exhibit JK3) stated that following the current situation in the industry it was clearly understood that there was no work for the employees being issued with notices. The Claimant in the said letter therefore proposed that the employees be paid the notices together with gratuity at once rather than being put on unpaid leave.

10. In an earlier letter dated 16th July, 2018 the Claimant stated among others that those to exit respondent's employment should have attained at least 47 years while those willing to retire and were below 47 years should be allowed to retire and paid full benefits as per the parties CBA.

11. The respondent in a letter dated 28th January, 2020 informed the County Labour Officer that for statistical purposes they reported that as per 28.1.2020, due to the first ban they had laid off through redundancies a total of 1228 employees. This letter was copied to the Claimant among others.

Section 40 (1) of the employment Act provides; -

“An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions.

(a) Where the employee is a member of trade Union the employer notifies the Union which the employee is a member and Labour Officer in charge of the area where the employee is employed of the reasons for and extent of the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy”.

12. Vide a letter dated 11th June, 2018 addressed to the Claimant/Union the respondent informed the Union that due to the moratorium on logging in public and community forests by the government, the respondent was experiencing financial constraints and was therefore unable to sustain the current labour force.

13. Consequently, the respondent wished to bring to the Claimant's notice, the intention to conduct redundancy which will affect around 300 employees across all departments.

14. The letter further stated that the respondent wished to abide by Section 40 of the Employment Act and Section 17 of the current CBA and issue all concerned parties with thirty days' notice with effect from June, 2018 to July, 2018.

15. Section 40 of the Employment Act referred to above states that the notification to the union and the local Labour officer should state the reason for and extent of the intended redundancy. The initial declaration of redundancy for the 300 employees and reasons for such redundancy complied with the requirements of Section 40 of the Act insofar as reasons and extent of redundancy was concerned hence the court is not persuaded that the Claimant has demonstrated a prima facie case to warrant the grant of any interlocutory injunction.

16. Concerning the subsequent redundancies, the Court whilst acknowledge this was occasioned by the extension of the moratorium on logging in public and community forest on 21st November, 2019 for a further four months, no material or evidence has been placed before me by the respondent showing the Claimant and local Labour Officer were notified of the extent of the subsequent redundancy after the initial 300 employees.

17. This omission however did not override the reason for which the redundancy went beyond the initial 300. It cannot alone justify the grant of interlocutory order where the reason for reduction in work was as a result of a government policy to conserve public and community forests. The legality, effect and consequence of this omission can be tried and appropriately recompensed at the main trial

18. In conclusion the Court will not grant any interlocutory relief and hereby directs that the suit proceeds to full trial.

19. It is so ordered.

Dated at Eldoret this 12th day of January 2021

Abuodha Jorum Nelson

Judge

Delivered this 12th day of January 2021

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge