



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 478 OF 2018

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT

VS

RELIABLE ELECTRICAL ENGINEERS (M) LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. In its Memorandum of Claim as amended on 12th October 2019, the Claimant cites the following issues of dispute:

- a) Unprocedural and unfair redundancy of twelve employees;
- b) Refusal to pay terminal dues under the redundancy clause of the Collective Bargaining Agreement.

2. The Respondent filed a Memorandum of Defence on 13th December 2018.

3. The matter proceeded by way of written submissions.

The Claimant's Case

4. The Claimant claims that the procedure used by the Respondent to declare 12 employees redundant was un-procedural and unfair.

5. In particular, the Claimant states that neither it nor the employees were notified of the redundancy. Additionally, the Grievants were not paid their terminal dues.

6. The Claimant submits that the Respondent failed to comply with Section 40 of the Employment Act and Clauses 3(c), 6, 7, 10, 15 and 25 of the parties' Collective Bargaining Agreement.

7. The Claimant seeks the following reliefs:

- a) A declaration that the action of the Respondent in declaring the employees redundant was unlawful and unfair;
- b) A declaration that the action of the Respondent in refusing to pay terminal dues as per the redundancy clause of the CBA was unlawful and unfair;
- c) An order reinstating the 12 employees or in the alternative payment of terminal dues as tabulated by the Claimant;
- d) 12 months' salary in compensation for unfair termination of employment;
- e) Costs of the suit.

The Respondent's Case

8. In its Memorandum of Defence dated 10th December 2018 and filed in court on 13th December 2018, the Respondent denies the Claimant's claim of unlawful and unfair redundancy and states that the Grievants are still in employment.

9. The Respondent submits that the Claimant has not adduced any evidence to prove termination of the Grievants' employment contracts.

Findings and Determination

10. When the matter came up for hearing, the parties chose to rely on their pleadings and written submissions, without calling any witnesses.

11. In its Memorandum of Claim as amended on 12th October 2019, the Claimant lays a claim of un-procedural and unfair redundancy affecting 12 of its members, who were employees of the Respondent.

12. In its written submissions filed in court on 3rd February 2021, the Claimant raises an issue of discrimination against 14 employees. In the said submissions, the Claimant appears to shift its focus from redundancy to temporary termination and agreement on terminal dues.

13. On its part, the Respondent claims that the Grievants, on whose behalf the Claimant has sued, are still in the Respondent's employment.

14. A reading of the parties' pleadings reveals many convoluted issues of fact which could not be ascertained without *viva voce* evidence. Having received the Respondent's defence, challenging the assertion of redundancy, the Claimant ought to have responded not only by way of reply to defence but also by *viva voce* evidence.

15. The Claimant did not discharge its evidential burden and therefore failed to dislodge the Respondent's defence that the alleged redundancy was non-existent. The Claimant's attempt to testify through the back door in its written submissions did nothing to save its case.

16. That said, I find and hold that the Claimant failed to prove its claim against the Respondent which therefore fails and is dismissed.

17. Each Party will bear its own costs.

18. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 18TH DAY OF MARCH 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Mr. Ondiege for the Claimant

Mr. Otwoma for the Respondent