



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 517 OF 2017

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

-VERSUS-

JANTECH ENGINEERING LIMITED.....RESPONDENT

RULING

1. On 15.3.2017, the claimant filed suit seeking among others reinstatement of the grievants herein to their respective positions in the respondent company. Simultaneously, with the claim the claimant filed application dated 15.3.2017 seeking to restrain the respondent from victimizing the grievants, and for an order that the grievants be allowed back to work with full pay pending determination of the redundancy dispute. On 16.3.2017 Ndolo J granted the reinstatement order when she sat as the duty Judge and fixed the application for inter-partes hearing on 29.3.2017.

2. On the said hearing date the respondent sought time to respond and the interim order was extended to 16.5.2017 when the matter was scheduled for mention for directions by Abuodha J. The court record shows that the respondent never complied with the said order and the claimant brought the instant application dated 22.6.2017 seeking the following:

(a) That an order be issued against the respondent's Director (Mr. Manminder Singh Jandu) to appear in Court to show cause why contempt proceedings cannot be preferred against him and or OCS Embakasi Police station be directed to arrest and produced him in the Court to be committed to civil jail.

(b) Any other order which the court may deem fit to grant.

3. The application is supported by the affidavit of the claimant's General Secretary Mr. Charles Naituli Wekesa in which he states that the respondent was served with the said court order but failed to comply and instead purported to pay terminal dues to the grievants; that the grievants took the cheques for the said payment but refused to sign discharge vouchers; that the court orders are still in force and as such the application ought to be allowed in order to protect the dignity of the court.

4. The respondent responded to the application by filing a Notice of Preliminary objection dated 6.7.2017 but on 3.11.2017, Mr. Manminder Singh Jandu attended court and explained under oath why the respondent did not comply with the said Court Order. At the close of the hearing, the court was of the view that further inquiry into the matter was necessary and directed the respondent to file further affidavit attaching evidence of the company financial position and the effort made to salvage the situation and also the evidence of payment of dues to the affected employees.

5. The respondent filed the affidavit on 27.11.2017 sworn by Mr. Manminder Singh Jandu on 24.11.2017. The affidavit annexed demand letter dated 20.7.2017 and a Statutory demand Notice in respect of a Charge dated 19.9.2017 from I&M Bank indicating a default on a loan of Kshs 48,830,683.27. The affidavit also annexed copy of four cheques of two grievants Mr. Vincent Bumale and Mr. Zachariah Arungo Ombasa for terminal dues bearing signatures next to an endorsement that the amount is full and final payment of their dues.

6. Thereafter the parties agreed to file submissions to dispose of the application. The claimant insisted that the respondent failed to comply with the said court order and ought to be committed to civil jail unless in the alternative it pays the two grievants sums of tabulated in the written submissions plus some throw-away costs of Kshs.50,000.

7. However, the respondent submitted that the application is overtaken by events and it lacks merits. It contended that it laid off the grievants due to financial constraints and that after the said court order it paid them their terminal dues which they accepted as full and final.

Analysis and determination

8. I have carefully considered the application, affidavits and the submissions filed. The main issue is whether the respondent has shown a good cause why he should not be cited for contempt of court issued on 16.3.2017 and later extended to 16.5.2017.

9. On 3.11.2017, the respondent's director attended court and explained the reason why the court order was not complied with. The court found the need for further inquiry into the matter and gave the respondent leave to file affidavit to bring to the court evidence of its financial problems, effort made to solve the problem and the payment of terminal dues made to the grievants. The respondent did so by filing the affidavit sworn by the said Director on 24.11.2017.

10. The claimant never filed any response to the said affidavit by the respondent. It follows that the averments by the respondent were never controverted since the grievants did not swear any affidavit to dispute the signatures on the said cheques which acknowledged the same as full and final dues from the employer.

11. In view of the foregoing, I find that the grievants voluntarily accepted the redundancy and took the sums paid as full and final settlement of their terminal dues. Considering the said compromise by the parties at the shop floor and the explanation given by the Director that the respondent was in some financial miasma, I find that the failure to comply with the court order was not deliberately meant to disobey the authority of the court. Consequently, in the special circumstances of this case, the application dated 22.6.2017 is without merits and is dismissed. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OCTOBER, 2021.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE