



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NUMBER E054 OF 2021

BAKERY, CONFECTIONARY,

FOOD MANUFACTURING AND ALLIED WORKERS UNION (K).....CLAIMANT

VERSUS

UNITED MILLERS LIMITED.....RESPONDENT

RULING.

1. This ruling relates to a Notice of Motion application dated 29th July, 2021, brought pursuant to Rule 17(1) of the Employment and Labour Relations court (Procedure) Rules, 2016, Section 12 of the Employment and Labour Court Act, 2011, Section 74 of the Labour Relations Act, 2007, and Section 87 of the Employment Act, 2007.
2. The applicant seeks order that:
 - i) Pending the hearing and determination of the main suit, a temporary order of injunction do issue restraining the respondent herein from effecting termination of the 77 grievants through redundancy pursuant to its Notice dated 22nd July, 2021, or any subsequent notice; and
 - ii) The costs of the application be provided for.
3. The application is supported by ground listed on the face of the application and a Supporting Affidavit sworn by one Danchael Mwangure, the General Secretary of the applicant herein.
4. The application is premised on the grounds that the Respondent issued notice of redundancy and simultaneously issued termination notices which affected 77 employees of the Respondent most of whom are members of the Applicant.
5. The applicant asserts that a Recognition Agreement and a Collective Bargain Agreement (CBA) exists between the parties herein, which obligates the Respondent to inform the applicant and discuss any contemplated declaration of redundancy.
6. The applicant states that the Respondent disregarded this agreement by issuing the redundancy notice simultaneously with the notices of termination.
7. The applicant argues that the Respondent is simply taking advantage of the on-going pandemic to effect mass redundancies without engaging the applicant on measures to mitigate the effects of the pandemic in a bid to balance the interests of the parties.
8. The applicant further argues that there has not been justification for the criteria applied in the declaration of redundancy contrary to *Section 40 of the Employment Act*.
9. It is the applicant's position that the Collective Bargaining Agreement between it and the Respondent is binding on the parties thereto pursuant to *Section 59 of the Labour Relations Act, 2007*.
10. The Respondent contends that it invited the applicant for a discussion on the intended redundancy with the hope of making the inevitable redundancy less painful, but the applicant rushed to court which action derailed the discussions.
11. The Respondent argues that an entire section of its operations was closed down due to the effects of the pandemic and scarcity of raw

materials

12. It is the respondent's position that out of the 77 employees it had intended to declare redundant, some have since been assigned other duties and that at the date of this hearing, only 44 employees are subject of the redundancy notice.

Determination

13. Clause 7(b) of the CBA between the Applicant and the Respondent states as follows:

“when a redundancy appears inevitable, the company shall inform and discuss with the Union before any redundancies are implemented, the reasons for and the extent of the intended redundancy prior to the issue of notice to the employee (s).”

14. Section 40 of the Employment Act provided thus in respect to redundancy:

“40. (1) 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 a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy.”

15. The foregoing provisions of Clause 7(b) of the CBA between the Applicant and the Respondent, provides that discussions prior to a declaration of redundancy is a mandatory requirement. The Respondent evidently failed to effectively discuss with the Applicant the terms of the redundancy. This was breach of due procedure on the part of the Respondent. The Court of Appeal in the case of ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR*** held that Kenya is a State party to the International Labour Organization (ILO), which requires consultation between employers and employees or their representatives, before termination of employment on account of redundancy. In the case of ***Kenya Aviation Workers Union v AGS Worldwide Movers Limited [2021] eKLR***, the court held that Injunctive orders will be granted if the respondent fails to prove that it followed the right procedure in declaring redundancy.

16. The court agrees with the assertions of the applicant that the Respondent did not give the Applicant/Union an opportunity to discuss the issues leading to the contemplated redundancy as well as a chance to question the validity of the reasons given for redundancy or the criteria for selection as stipulated under *Section 40 of the Employment Act, 2007*.

17. In conclusion, the court makes orders as follows:

- i) That Pending the hearing and determination of the main suit, a temporary order of injunction be and is hereby issued restraining the respondent herein from effecting termination of the 77 grievants through redundancy pursuant to its Notice dated 22nd July, 2021, or any subsequent notice.
- ii) That the dispute is referred for conciliation before the County Labour Office
- iii) That the County labour officer to appoint a Conciliator who is directed to file a report to court within 30 days.
- iv) That the matter will be mentioned on the 8th of November, 2021 with a view to either adopting the report of the Conciliator or making further orders with respect to disposal of this dispute.
- v) That the Deputy Registrar is directed to serve the orders herein on the Kisumu County Labour officer.
- vi) Each party to bear its costs of the suit
- vii) Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 14TH DAY OF OCTOBER, 2021.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Amalemba present for the Applicant/Union

Mr. Ouma present for the Respondent

Ms. Christine Omollo – Court Assistant