



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 521 OF 2016

BETWEEN

AMALGAMATED UNION OF KENYA METAL WORKERS CLAIMANT

VERSUS

M/S SHANKAR ELECTRONIC LIMITEDRESPONDENT

RULING

1. In a Judgment delivered on 6th November 2017, the Court ordered:-

- a) The Respondent shall implement the CBA registered in Court as RCA 289 of 2014, fully.
- b) Accrued benefits under the CBA, as computed by the Claimant in the Schedule produced in Court by the Claimant Union [exhibit 4] shall be paid to the Employees by the Respondent.
- c) Interest allowed at 14% per annum from the effective date under the CBA, until payment is made in full.
- d) Costs to the Claimant.

2. The dispute relates to non-implementation of CBA by the Respondent.

3. The record indicates the dispute was reported to the Ministry of Labour, before filing in Court. The County Labour Officer was appointed as Conciliator. The Respondent ignored the conciliation process and did not attend any of the conciliation meetings convened by the Conciliator.

4. After filing in Court, the Claimant served the Respondent with the Statement of Claim. The Respondent did not file Response, and did not attend Court at any time, when required to do so.

5. The Claimant was heard ex-parte on 7th November 2017, and Judgment delivered as indicated above. The Claimant subsequently applied for execution of decree.

6. The Respondent filed, under Certificate of Urgency, 2 Applications seeking to stop the Claimant from executing.

7. The 1st was filed on 17th October 2018, seeking that there is an order of stay of execution, and the Respondent is granted unconditional leave to respond to the Claim. The Application is supported by the Affidavit of Respondent's Director, Shaahid Parvez Shaekh, sworn on 17th October 2018.

8. The 2nd was filed on 24th October 2018, supported by an Affidavit of the selfsame Shaekh, sworn on 24th October 2018. The Application seeks an order for temporary injunction, restraining the Claimant from selling through auction, proclaimed goods belonging to the Respondent.

9. Conditional order of stay of execution was granted on 24th October 2018. It was agreed that the Applications are disposed of through Written Submissions.

The Court Finds:-

10. The Applications are based on incorrect statements of fact. The Respondent states it does not have Recognition Agreement and Collective Bargaining Agreement with the Claimant Union.
11. There is on record a Certificate of Registration of Collective Bargaining Agreement, RCA 289 of 2014, dated and signed by Hon. Justice Nzioki wa Makau on 27th November 2014. There is a valid CBA duly registered in Court. It is this CBA that the Respondent failed to implement, resulting in arrears of salaries to the Employees.
12. CBA is preceded by Recognition Agreement. There is no way Parties would have concluded their CBA, without first agreeing on recognition. There is on record a Recognition Agreement, signed between the Parties on 1st August 2009.
13. The Respondent argues alternatively, that the CBA and the Recognition Agreement are not binding.
14. The allegations made by the Respondent are utterly baseless. There is on record a CBA and Recognition Agreement duly executed by the Parties. It is not correct that these labour contracts are null, void ab initio, and of no consequence.
15. The Respondent failed to participate in the conciliation process, and to respond to the Claim in Court. The Director alludes to negotiations carried out by the Parties at their own level, on 12th October 2018 and 15th October 2018, which failed to yield settlement.
16. It is upon this failure that the Respondent filed the Applications before the Court.
17. Unfortunately, the Applications are without merit. They are based on misstatement of facts and irrelevancies. The Respondent disputes the presence of the CBA, Recognition Agreement and service of the Court Summons. The record irrefutably discounts the position of the Respondent. The Respondent displays lists of its Employees, arguing that the Claimant Union did not recruit a simple majority. This is irrelevant because there is no recognition dispute before the Court. The Respondent recognized the Claimant way back in 2009, and has subsequently, concluded a CBA. None of these labour contracts is shown to have, by any legal process, lost its binding force. The Respondent cannot avoid implementation of a CBA which has been validly negotiated, concluded and registered with the Court.
19. The Applications are without merit.

IT IS ORDERED:-

a) The Applications filed by the Respondent on 17th October 2018 and on 24th October 2018 are rejected with costs to the Claimant.

b) The Claimant is at liberty to execute.

Dated and delivered at Mombasa this 22nd day of February 2019.

James Rika

Judge