



**REPUBLIC OF KENYA**  
**IN THE EMPLOYEMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**

**CAUSE NUMBER 913 OF 2015**

**BETWEEN**

**KENYA ENGINEERING WORKERS UNION.....CLAIMANT**

**VERSUS**

**DEVKI STEEL MILLS LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Lawrence Osotsi*

*Industrial Relations Officer, Joseph Omolo, for the Claimant*

*K.Mberia & Company Advocates for the Respondent*

---

**JUDGMENT**

1. This Claim is presented by the Claimant Union, on behalf of about 182 of its Members, who are former Employees of the Respondent Steel Industry.
2. The dispute arose in May 2015, when the Respondent undertook a redundancy exercise at its Plant, affecting the Employees.
3. The Claimant states redundancy did not adhere to the provisions of the law, and the redundancy clause contained in a Collective Bargaining Agreement concluded by the Parties.
4. In its Statement of Claim filed on 27<sup>th</sup> May 2015, the Claimant prays the Court to grant Judgment against the Respondent, reinstating the Employees, until the laid down procedure under the law and the CBA, is honoured.
5. The Claimant filed with the Statement of Claim, an Application dated 26<sup>th</sup> May 2015, asking the Court to reinstate ‘‘ all 180 Employees, until the Employment Act and the CBA are adhered to’’
6. The prayer in the Application is the same prayer in the Claim.
7. The Application was dismissed by the Court on 8<sup>th</sup> February 2018, in the absence of the Claimant.
8. The Parties fixed the Claim for hearing on 5<sup>th</sup> April 2019, during the Court’s Service Week. The Claimant was in attendance this time, while the Respondent did not attend Court.
9. The Claimant submitted through Mr. Omolo that redundancy did not follow the laid down procedure contained in the law and the CBA. He reiterated that the Employees should be reinstated, until the law and the CBA are honoured.

**The Court Finds:-**

10. The Claim is essentially a replica of the Application by the Claimant, which was rejected by the Court on 8<sup>th</sup> February 2018.

11. It would not make sense for the Court to go on and make a determination on the Claim, after the Application, which is a replica of the Claim, was rejected.

12. Mr. Omolo, in his Submissions on the substantive Claim, did not say anything outside what is contained in the Application which was dismissed by the Court.

14. Considering the Claim on its own, without the Court's mind being shackled by the outcome of the Application, there is no basis for temporary reinstatement of 182 Employees, pending adherence to the law and the CBA, as sought by the Claimant.

15. Termination on account of redundancy took place way back in 2015. Reinstatement, which is the sole remedy sought, albeit on temporary basis, cannot be granted in law in excess of 3 years after termination.

16. The Claimant acknowledges that the Employees were paid redundancy dues. Mr. Omolo submitted quite innovatively, that redundancy dues paid to the Employees be converted to loans, once they are reinstated. The Court does not have the authority to create a loan out of terminal benefits paid to an Employee by his Employer. It is also noted that no Employee was called to testify, to establish the circumstances of termination. The Court does not even know what amount was paid to the Employees. The Claimant's General Secretary who swore an Affidavit attesting to the issues in dispute was similarly not availed to the Court. There is hardly evidence on record to justify reinstatement of 182 Employees. The remedy of reinstatement, which is the sole remedy sought by the Claimant, is contrary to the law, impracticable and unreasonable.

17. The Claim is rejected not only for the reason that it completely replicates an Application by the Claimant which has already been rejected, but also on the ground that on its own merit, the Claim is weak on facts, the law and cannot stand.

IT IS ORDERED:-

*a) The Claim is dismissed.*

*b) No order on the costs.*

*c) The file shall be marked as closed.*

**Dated and signed at Mombasa this 2<sup>nd</sup> day of July 2019.**

**James Rika**

**Judge**

**Dated, signed and delivered at Nairobi this 5<sup>th</sup> day of July 2019.**

**Byram Ongaya**

**Judge**