



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 680 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 16th February 2018)

KENYA BUILDING, CONSTRUCTION, TIMBER AND

FURNITURE INDUSTRIES EMPLOYEES UNION.....CLAIMANT

VERSUS

AQUA PLUMBING COMPANY LIMITED.....RESPONDENT

JUDGEMENT

1. The Claimant herein filed this Memorandum of Claim on 14th May 2013 alleging failure by the Respondent to sign a negotiated Collective Bargaining Agreement. The Claimant is a registered trade union registered under the now repealed Trade Disputes Act Cap 233 Law of Kenya.
2. The Claimant avers that the Respondent was initially a member of the Kenya Association of Building and Civil Engineering Constructors, a division within the Kenya Federation of Employers but later withdrew its membership.
3. The Respondents on the other hand is a company duly registered in Kenya engaged in plumbing and building business.
4. It is the Claimant's case that they sent out proposals to the Respondent to commence negotiations for a Collective Bargaining Agreement with the view to improve on the condition of the employees of the Respondent and members of the Claimant.
5. The Claimant avers that the Respondent failed to cooperate with the Claimant forcing the Claimant to report to the Minister for Labour for conciliation.
6. That the Conciliator endeavored to assist the parties herein with some form of assistance and the parties agreed on several items in the collective Bargaining Agreement. The Parties differed on issues of redundancy and retirement represented in clause No. 17 (iv) and Clause 19(a) of the proposed Collective Bargaining Agreement.
7. It is the Claimant's position that Conciliator tried to resolve the matter and advised that the parties look at the Building and construction Industry Order, Legal Notice No. 94 of 2004 and the Employment Act noting that the Legal provisions for the 2 issues are not negotiable but can only be improved upon by the parties.
8. That the Respondent refused to consider the 2 issues and it any further negotiations.
9. The Claimant wants this Court to order the Respondent to sign the Collective Bargaining Agreement negotiated by the parties herein plus costs of this suit.
10. The Respondents never filed any response to this claim. They appeared in Court and were asked to file their defence on 10th July 2017 within 7 days. They never did. The Court directed the case to proceed without the defence. The parties were then asked to file their submissions. The Respondent never filed any submissions.
11. The Claimant filed his submissions reiterating the averments in the claim.

12. I have examined the Claimant's claim and submissions. I note that the claim herein concerns signing of a Collective Bargaining Agreement. The issues of a Collective Bargaining Agreement are issues of an Agreement between Parties. The Courts would not necessarily intervene and force the signing of the Collective Bargaining Agreement. This will be tantamount to managing the affairs of the employees and the Union which is against the principles of freedom of Association.

13. In the circumstances, I direct that the parties herein submit once more to the Conciliator and attempt to sign a Collective Bargaining Agreement. They should report back to Court their progress within 60 days for further directions.

Read in open Court this **16th day of February, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties