



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1897 OF 2017

(Before Hon. Lady Justice Hellen S. Wasilwa on 14th February 2018)

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

MOTORWAYS KENYA LIMITED.....RESPONDENT

RULING

1. This claim concerns what Claimant referred to as an intended unfair and unlawful redundancy of Joseph Mwololo, George Oduor Oloko and Wilson Ndungu Nyoike. When the parties appeared in Court on 28th September 2017, this Court gave orders stopping the intended redundancy until the matter was heard or until further orders of the Court. This Court also directed the parties to try and seek a settlement.

2. Indeed the parties sought help from Mr. Martin Njiri Advocate who was gracious enough to try and reconcile these parties. He filed his report in Court on 10th October 2017.

Facts of the case

3. The Grievants were employed on different dates and in different capacities as follows:-

“1st Grievant – 1st March 2011 as an Electrician at a salary of 18,289/=.

2nd Grievant employed in August 1987 as a Mechanic at a salary of 24,055/=.

3rd Grievant employed in 1995 as a Driver at a salary of 18,165/=.”

4. On 30th September 2017 the Grievants were served with redundancy notices. The redundancy was to take effect immediately. However, on 22nd September 2017 in anticipation of the redundancies, the Claimants filed an urgent application to stop the redundancies which the Court allowed on 28th September 2017.

5. According to the Claimants, the notices were unlawful and unfair because they failed to take into consideration the parties Collective bargaining Agreement Appendix 2.

6. Indeed the parties herein have a valid Collective Bargaining Agreement signed on 1st January 2012 and which was to run for 2 years. The said Collective Bargaining Agreement has never been reviewed but in view of Clause 33 of the said Collective Bargaining Agreement ...

“.....it shall continue to be in force indefinitely until either party wishes to amend it after giving notice of 2 months. This has not been done”.

7. The said Collective Bargaining Agreement also provides for what happens in a redundancy situation under Clause 18. The Collective Bargaining Agreement states that they will be entitled to 3 months' notice before redundancy is effected. Other benefits include payment of wages, overtime and any other remuneration which may be due, severance pay of 20 days for each completed year of service. Other entitlement is 10000/= for transportation of goods.

8. In view of these provisions, it is apparent that the redundancy notices were flawed. They were issued without consideration of the three months' notice period. In view of the submissions so filed by the parties, I find that the redundancy should proceed but the Grievants should

be paid their dues as follows:-

1st Grievant – Joseph Mwololo Maweu

1. 3 months' pay in lieu of notice = $22,146 \times 3 = 66,438/=$.
2. Transport costs = 10,000/=.
3. Redundancy pay for 17 years = $26/30 \times 22,146 \times 17 = 19,193.2 \times 17 = 326,284.4$
4. Unpaid salary for October 2017 and November 2017 = $2 \times 22,146 = 44,292/=$

Total = 447,014/= Less statutory deductions

2nd Grievant – George Oloko

1. 3 months' pay in lieu of notice = $28,866 \times 3 = 86,598/=$
- 2 Transport costs = 10,000/=.
3. Severance pay for 30 years = $26/30 \times 28,866 \times 30 = 750,516/=$.
4. Salary for October and November 2017 = $28,866 \times 2 = 57,732/=$.

Total = 904,846/= Less statutory deductions

3rd Grievant – Wilson Nyoike

1. 3 months' pay in lieu of notice = $22,151 \times 3 = 66,453/=$.
2. Transport costs = 10,000/=.
3. Service pay for 22 years = $26/30 \times 22,151 \times 22 = 422,346/=$.
4. Salary owing for October 2017 and November 2017 = $2 \times 22,151 = 44,302/=$

Total = 454,101/= Less statutory deductions

9. Claim for gratuity is not payable as Claimants were members of NSSF.

10. The Respondent will also pay costs of this suit plus.

Read in open Court this 14th day of February, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties