



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 486 OF 2018

BETWEEN

KENYA SHOE AND LEATHER WORKERS UNION.....CLAIMANT

VERSUS

SLAPPER SHOE INDUSTRYRESPONDENT

RULING

1. This Claim, filed on 9th October 2018, is presented by the Claimant Union on behalf of 44 Employees of the Respondent, who are Members of the Claimant Union.
2. The Claimant and the Respondent have a Recognition Agreement. They made their last Collective Bargaining Agreement, on 14th September 2017.
3. On 28th September 2018, the Respondent issued Notice of Intended Redundancy, affecting the 44 Employees. The Notice discloses that the Respondent has sold its Plant, Machinery and Equipment to a Company in Nairobi. The Respondent is based in Mombasa. Each Employee was interviewed by the Respondent before 28th September 2018, and offered transfer to work in the new Company at Nairobi. Some Employees, the Notice indicates, have agreed to move. Others have declined. The Notice states a consultative meeting had been held between the Claimant's Mombasa Branch Secretary, and the Respondent. The Notice is copied to the Federation of Kenya Employers, who acts for the Respondent in this dispute, the Claimant's Branch Secretary, and the County Labour Officer Mombasa.
4. The Claimant's position is that Redundancy has deviated from the requirements of Section 40 of the Employment Act 2007, and Clause 12 [c] of the Parties' Collective Bargaining Agreement. The Clause states:

“ In event of redundancy, the Company undertakes to hold prior discussions with the Union concerning the reasons for and extent of redundancy.”
5. The Main Claim seeks to have Judgment against the Respondent in the following terms:-
 - a) The Respondent is ordered to follow the laid down procedure as per Clause 12 [c] of the Parties' Collective Bargaining Agreement, and Section 40 of the Employment Act 2007.
 - b) The Respondent to pay costs of the Claim.
 - c) Any other suitable relief.
6. The Claimant filed with the Statement of Claim, an Application for interim measures, to have the Respondent restrained from making unlawful declaration of redundancies, pending hearing and determination of the Claim; the Director of the Respondent ordered to attend Court for *inter parte* hearing; and the Respondent ordered to comply with Section 40 of the Employment Act and Clause 12[c] of the Collective Bargaining Agreement.
7. The Application is grounded on the Affidavit of the Claimant's General Secretary, Julius Ndombi Maina, sworn on 8th October 2018.
8. The Respondent filed, on 24th October 2018, its Replying Affidavit sworn by Personnel Manager Thomas Nyandwaro on 23rd October

2018.

9. Nyandwaro explains that indeed, the Parties have a Recognition Agreement and Collective Bargaining Agreement, as submitted by the Claimant.

10. On or about 16th August 2018, the Respondent's Board of Directors passed a resolution, to sell its Plant to Finlay Brush Ware Limited, a Company based in Nairobi. The Employees were informed about this decision. Employees were given the option of transfer to Nairobi. Nyandwaro consulted the Claimant's Branch Secretary. 34 Employees have agreed to transfer to Nairobi as shown in Respondent's annexure 'TN3.' The Respondent thereafter issued Notice of Intention to Declare Redundancy, dated 27th September 2018. A copy was sent to Claimant's Head Office in Nairobi via registered mail. The Claimant, rather than respond to the Respondent's Notice, rushed to Court and obtained an order of injunction. The Respondent has commenced the process of selling its Plant. If the process of redundancy is stopped, the Respondent will suffer loss and damages as it would not have money to sustain the Employees. The Respondent prays the Court to allow the process to continue.

11. The Application was heard yesterday, 25th October 2018, and comes up for Ruling today, 26th October 2018.

The Court Finds:-

12. The dispute is essentially about Clause 12 [c] of the CBA, quoted at paragraph 4 of this Ruling. The Claimant is complaining about lack of consultation.

13. The orders sought in the interim, as well as in the substantive Claim, include an order compelling the Respondent to consult the Claimant Union. Other orders, such as the order compelling the Respondent's Director to attend Court, are meaningless. In determining the Application therefore, the Court shall have determined the main Claim.

14. There is evidence that the Respondent consulted the Claimant's Branch Office. The complaint, by the Claimant Union, appears to be that the National Office has not been consulted. It would be expected, that the Branch and National Offices, communicate routinely. Why would the Branch Office fail to bring the matter, to the attention of the National Office, resulting in the General Secretary coming to Mombasa from Nairobi to litigate?

15. The General Secretary submits that his Union is not opposed to the whole of the redundancy process. He submits that the Respondent is at liberty to continue with sale of its Plant and Machinery. The complaint is purely about consultation under Clause 12 [c] of the CBA.

16. The Court does not think this complaint warrants grant of orders of injunction, restraining the Respondent, from going on with the redundancy process. What the Claimant's National Office should seek, is to be included in the process, moving forward. Such inclusion can be procured without litigating. Both Parties agree there is a redundancy situation.

17. The sale of the Plant and Machinery, which is going on, means Employees, shall in the near future have no work to perform here in Mombasa. The Respondent has acted reasonably by finding them placement in Nairobi. It is submitted 34 Employees, have agreed to move. The Claimant Union should not bring confusion into the process, by commencing and hanging onto this unnecessary litigation. It ought to pursue the offer for relocation of its Members to Nairobi, and negotiate packages with the Respondent, for those Members who desire not to move to Nairobi. The Claimant should reply to the Notice of Intention to Declare Redundancy, and consult the Respondent, instead of litigating what looks to the Court to be a straightforward redundancy process.

18. The Court makes the following orders:-

a) The Respondent is at liberty to move ahead with the redundancy process.

b) In doing so the Respondent shall engage with the Claimant's National Office, as opposed to the Branch Office.

c) There is nothing left for trial in the main Claim, and therefore, this Claim shall be marked as concluded, and the file closed, with no order on the costs.

Dated and delivered at Mombasa this 26th day of October, 2018

James Rika

Judge