



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 850 OF 2013

KENYA CHEMICALS AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

AFRICAN DIATOMITE LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant union sought the order of the court to set aside the conciliation agreement entered into on 7th June, 2012 on the grounds that the same violated clauses 22 and 25 of the CBA hence invalid and improper.
2. According to the union, upon declaration of redundancy of their members they were to receive redundancy benefits as provided for under clause 22 of the CBA as well as gratuity as provided for under clause 25 of the CBA.
3. The respondent resisted the claim contending that the claimant and the respondent were involved and engaged in the resolution of the dispute from the onset and that the parties consequently entered into an agreement before the conciliator settling the dispute. According to the respondent therefore there existed no dispute between the claimant and the respondent. The respondent submitted further that the claimant could not resurrect the matter since it agreed through its representatives to sign an agreement thereby marking the matter as settled. The respondent sought reliance on the case of **Mary Wairimu Gitonga & 29 Others Vs Ken Knit (Kenya) Ltd.**
4. A CBA once concluded by the parties and registered by the court becomes part of the employee's contract of employment. Section 3(6) of the Employment Act provides as follows:

“Subject to the provisions of this Act, the terms and conditions of employment set out in this Act shall constitute minimum terms and conditions of employment of an employee and any agreement to relinquish vary or amend the terms herein set shall be null and void”.
5. In the above context the conciliation agreement entered into between the claimant union and the respondent which sought to deprive the grievant of gratuity benefits constituted an agreement to relinquish or vary a more favourable term to the detriment of the claimants hence null and void to that extent.
6. The court therefore hereby orders that in addition to the redundancy benefits under clause 22 of the CBA, the grievants be paid their clause 25 dues as provided in the CBA.
7. It is so ordered.

Dated at Nairobi this 5th day of October, 2018

Abuodha Jorum Nelson

Judge

Delivered this 5th day of October, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.