



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
AT NAIROBI
CAUSE NO. 3 OF 2003
BAKERY, CONFECTIONARY, MANUFACTURING
ALLIED WORKERS UNION (K).....CLAIMANT
VERSUS
JAMBO BISCUITS (K) LIMITED.....RESPONDENT
RULING

1. On 19th November, 2015 the court gave directions to the effect that if there was judgment already delivered and the only pending issue was the quantum, the parties having made submissions the court would determine the quantum of the award. The court therefore invited the parties to file supplementary affidavits on the point to assist the court on the issue.
2. In June, 2009 Hounourable Justice Stewart Madzayo gave an award on certain contentious clauses of the CBA and finally directed in the said award that parties do conclude a CBA immediately and have the same registered in accordance with law in the next forty five days from the date of the award.
3. The respondent herein has averred and it has not been denied by the claimants that no such CBA was concluded. It would therefore mean that there is to date no registered CBA. Under section 60(1) of the Labour Relations Act, every CBA shall be submitted to the Court for registration within fourteen days of its conclusion.
4. Further section 59(5) of the same Act provides that a CBA becomes enforceable and shall be implemented upon registration by the court and shall be effective from the date agreed upon by the parties. What the foregoing provisions of the statute imply is that a CBA must be registered by the Court to be operational, second upon registration it becomes effective from the date agreed upon by the parties.
5. In the context of the matter before me, what retired Justice Madzayo did was to settle the contentious clauses of the CBA and left the parties to conclude and register the same within forty five days of the award. This seems not to have happened with the consequence that there is no CBA the basis upon which the parties can compute the quantum of the award.
6. The respondent has complained that whereas the award by Madzayo J was given in June 2009, the claimants did nothing about it until 2013 when the respondent attempted to transfer the respondent's business to an investor, to raise the issue. The respondent therefore regarded this as malicious and intended to cripple the respondent financially.

7. The court has perused the notice of transfer of business pursuant to Transfer of Business Act and noted that upon transfer, all debts or liabilities due and owing by the transferor in respect of the business up to the date of the transfer shall be received and paid by the transferor.

8. There is no allegation that the claim if any concerning the claimant's members if eventually proved would not be paid by the respondent. What the claimant has done is to stand in the way of a purely commercial transaction without demonstrating by way of a formal application why the claimant thinks the respondent would not be able to meet its obligation upon the transfer of the business to the prospective investor. Further the court has not seen an application seeking to compel the respondent to disclose the quantum of the transfer fees and further there is no formal attempt to lay claim by the claimants on the transfer fees.

9. Considering that the Court has come to finding that there is in existence no CBA upon which the claimants can quantify the claim, the court will discharge the orders issued in restraint of transfer of the respondent's business as they were issued *per incuriam*. Parties shall however have the liberty subject to subsistence of a valid recognition agreement, to pursue finalization of the CBA as ordered by Madzayo J in his award of 4th June, 2009.

10. It is so ordered.

Dated at Nairobi this 17th day of February, 2017

Abuodha J. N.

Judge

Delivered this 17th day of February, 2017

In the presence of:-

Mr Nelson Harun for the Claimant and

Mr Kibanya for the Respondent.

Abuodha J. N.

Judge