



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 564 OF 2016

BETWEEN

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS HOSPITALS AND ALLIED WORKERS.....CLAIMANT

VERSUS

B.O.M AKAMBA HANDICRAFT INDUSTRY

COOPERATIVE SOCIETY

LIMITEDRESPONDENT

RULING

1. The Claimant Union filed a Statement of Claim on 24th July 2016. The issue in dispute is stated in the Statement of Claim to be:-

- Refusal by the Respondent to pay Salaries and Terminal Benefits to Jackson Kithu Mwaniki, Caleb Mutuku Sila, David Munywoki, Daniel Mutua Kisilu, Murisa Mwambuni, Java and those who are still in employment.

2. The Persons named and unnamed above, are said to be Members of the Claimant Union, and ex-Employees or Employees of the Respondent.

3. The main prayer in the Claim is that arrears of Salaries and Terminal Benefits are paid by the Respondent to the Claimant's Members, within 30 days of Judgment.

4. On 25th July 2016, the Claimant made an Application asking *inter alia*, that the Respondent is ordered to pay Employees' arrears of salaries, pending from May 2015, to the tune of Kshs. 5,731,350. The Application is supported by the Affidavit of Zaccheus Osore, Claimant's Branch Secretary.

5. The Respondent filed a Replying Affidavit, sworn by its Chairman, Harrison Kitala on 17th August 2016. It does not deny owing Employees Salaries and Terminal Benefits. Kitala explains Respondent's business is tourism-based, and has suffered an economic downturn, due to insecurity in the Country.

6. The Respondent has undertaken to pay all Salaries and Terminal Benefits. A portion of its land at Changamwe was compulsorily acquired by the Government for purposes of construction of Airport Road.

The Respondent expected it would receive compensation before end of September 2016. All Salaries would be paid once compensation was received.

7. It would not be fair to order that the Respondent pays to the Claimant's Members the sum of Kshs. 5,731, 350 in lump sum.

8. The Respondent is ready to clear the balances of terminal dues owed to Mwaniki [Kshs. 730,927]; Mutuku Sila [Kshs. 148,000]; David Munywoki [Kshs. 104,798]; and Murisa Mwambuni [Kshs. 133,656] in installments of Kshs. 10,000 monthly.

9. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions.

The Court Finds:-

10. The Respondent through its Chairman concedes it owes its Employees and ex-Employees, Salaries and Terminal Dues, dating back to May 2015.

11. Payment has not been made due to financial constraints suffered by the Respondent, as a result of poor performance generally experienced in the tourism industry. The Respondent depends on tourists to buy its products.

12. It is also apparent that the Respondent has not refused to meet its obligations to the Employees. The Respondent gave an undertaking to pay, once compensation for its property was received from the Government. It was expected this would be received by end of September 2016.

13. The Parties last appeared in Court, on 1st October 2016. There was no indication given to the Court, if the land transaction went through; and whether any money was paid to the Grievants.

14. In the view of the Court, this is a dispute which can be resolved through investigation and conciliation of the County Labour Office. The Respondent argues correctly that the Claimant is at fault, by not disclosing the names of all its Members on whose behalf the Claim is made. This however can be cured through the investigation and conciliation of the Labour Office.

15. The County Labour Office shall therefore investigate the details of Employees who are owed Salaries and/ or Terminal Benefits; the amounts paid if any; and whether the Respondent was paid compensation by the Government upon acquisition of its land. For now, the Court does not think entry of Summary Judgment, which is what the Claimant essentially seeks, would assist the Parties in resolving and dissolving their dispute.

16. *The Court notes on the record that the Respondent has acknowledged indebtedness to its Employees and ex-Employees.*

IT IS ORDERED:-

a) The dispute is referred to Mombasa County Labour Office for investigation and conciliation under Section 15 of the Employment and Labour Relations Court Act.

b) The County Labour Office to file in Court, and serve the Parties with its Investigation and Conciliation Report within 30 days.

c) Parties to move the Court for further orders once the Report of the Labour Office is available

Dated and delivered at Mombasa this 17th day of February, 2017.

James Rika

Judge