



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

CAUSE NO 2002 OF 2014

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT

VERSUS

AMAZON MOTOR LIMITED.....RESPONDENT

RULING

1. The Claimant's application brought by Notice of Motion dated 29th July 2016 seeks the following orders:

- a) An order directing the Respondent to pay to the Grievants the sum of Kshs. 1,151,243 which the Claimant claims is admitted in the Respondent's Reply;
- b) An order directing the parties to file written submissions on the remaining issues in the claim.

2. The application, which is supported by the affidavit of the Claimant's General Secretary, Rose Auma Omamo is based on the following grounds:

- a) That the Grievants were declared redundant on 2nd August 2013;
- b) That the parties failed to agree at their level prompting the Claimant to invoke Section 62 of the Labour Relations Act;
- c) That the Conciliator issued a certificate of disagreement on 17th September 2014;
- d) That the claim was filed in court on 14th November 2014 and in its Response filed on 24th March 2015 the Respondent admits owing the Grievants the sum of Kshs. 1,151, 243 as balance;
- e) That what is in dispute is whether the Grievants are entitled to both service pay and service gratuity;
- f) That the parties have a duly negotiated and registered Collective Bargaining Agreement whose clauses 20 and 21 need interpretation by the Court;
- g) That the Grievants have not secured alternative employment and they will continue to suffer if the orders sought are not granted;
- h) That the Respondent will not suffer any prejudice if the orders sought are granted.

3. The Respondent's response is contained in a replying affidavit sworn by its Managing Director/Chief Executive Officer, Claude Mwende on 26th September 2016. She depones that the parties herein entered into negotiations and reached a settlement on 13th May 2014 by which the Respondent was to pay redundancy dues to the Claimant's members.

4. Mwende further depones that out of the total tabulation, the Respondent had paid the sum of Kshs. 2,130,151 to the Grievants. She however denies that there was an admitted amount as balance stating that any such balance was the subject of negotiations prior to the Claimant filing this claim.

5. It is the Respondent's position that this application is contrary to the principle of negotiating in good faith.

6. The main prayer in this application is for an order directing the Respondent to remit the sum of Kshs. 1,151, 243 being balance of redundancy dues owed to the Grievants, a sum the Claimant states is admitted by the Respondent.

7. However, a reading of the submissions filed by the parties reveals that the amount claimed by the Claimant in the application touches on contentious issues raised in the main claim, including interpretation of the Collective Bargaining Agreement. In fact, the parties' submissions are on these contentious issues, rather than on a specific amount of the claim.

8. That being the case, I find that the prayers sought cannot be granted at the interlocutory stage. I must however add that having gone full circle through the conciliation process the parties cannot claim to be still negotiating. I therefore direct that the main claim be fixed for hearing on priority basis.

9. The costs of this application will be in the cause.

10. Orders accordingly

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 31ST DAY OF MARCH 2017

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JUDGE

Appearance:

Mr. Makale (Union Representative) for the Claimant Ms. Mueni Nyokabi for Respondent