



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 279 OF 2014**

**[Previously Nairobi Cause Numbers 217, 218, 220, and 240 of 2010]**

**BETWEEN**

**BAKERY, CONFECTIONERY, FOOD**

**MANUFACTURING AND ALLIED WORKERS UNION [K].....CLAIMANT**

**VERSUS**

**MOMBASA MAIZE MILLERS LIMITED.....RESPONDENT**

**AND**

**KENYA UNION OF COMMERCIAL,**

**FOOD & ALLIED WORKERS.....INTERSTED PARTY**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Daniel Amalemba Legal Officer of the Claimant, for the Claimant*

*Beatrice Opolo Advocate instructed by the Federation of Kenya Employers [FKE] for the Respondent*

*Charles Egesa, Industrial Relations Officer for the Interested Party*

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**RULING**

1. This Claim is made by the Claimant Union, on behalf of 43 Employees, who are said to have been employed by the Respondent on various dates, and whose services were terminated by the Respondent on the ground of redundancy, sometime in the year 2009.
2. The Claim was initially filed at the Industrial Court in Nairobi, and was consolidated thereat, with other 4 related matters, before being transferred to Mombasa and registered as Cause Number 279 of 2014.

3. Registry at Mombasa should therefore note the Cause is 279 of 2014, not 240 of 2010 as was indicated on the folder containing the file. There are no matters which were registered in the year 2010 at the Court in Mombasa.

4. The Claimant prays the Court to find redundancy was unlawful and unfair and pay the Grievants redundancy dues and compensation.

5. The Respondent opposes the Claim, submitting the Grievants were never its Employees. Secondly, it does not have a Recognition Agreement with the Claimant Union; it has one with the Interested Party.

6. The Interested Party affirms it has a valid Recognition Agreement with the Respondent, executed on 17<sup>th</sup> March 2010. The Interested Party and the Respondent have negotiated and registered several Collective Bargaining Agreements.

7. Parties agreed on 18<sup>th</sup> July 2016, to have the Claim considered and disposed of, on the strength of the record. The Claim was last mentioned in Court on 4<sup>th</sup> November 2016 when Parties confirmed the filing of their Submissions and date for delivery of Judgment reserved. As shall be seen in the following paragraphs however, there is already a Judgment [Award] under the consolidated files, and the Court can only give a Ruling, with regard to the dispute on redundancy.

**The Court Finds:-**

8. This Court heard and determined the dispute on recognition under the consolidated Cause Number 279 of 2014. It was ordered that a ballot be conducted through the Labour Office, to ascertain which of the 2 Trade Unions, has the majority number of Employees at the different outlets of the Respondent.

9. The present dispute falls within the consolidated files, and cannot be determined without execution under the Award made by the Court on recognition. The Court has not been told if the ballot exercise was carried out. As it is the Court is being called upon, for a second time, to determine a recognition dispute inherent in the redundancy dispute. This is a waste of judicial time.

10. What the Court is being asked under the dispute on redundancy, is to close its eyes, and act as if there was no consolidation, and orders made on demarcation in the recognition dispute. It was improper for the Parties to pull out one of the consolidated files and misled the Court to hear them, without disclosure of the previous proceedings. IT IS ORDERED:-

*a. The Claim on redundancy is hereby struck off.*

*b. Parties to pursue execution of the orders made on recognition dispute.*

*c. The Claimant may file a fresh Claim on redundancy, depending on the result of the recognition dispute.*

*d. The Deputy Registrar is directed to place the consolidated files indicated above together, with the file containing Award on Recognition Agreement, being the reference file.*

*e. Costs in the cause.*

Dated and delivered at Mombasa this 16<sup>th</sup> day of June 2017

**James Rika**

**Judge**