



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2126 OF 2011

1. MAXWELL ODEDE
2. PETER MULU.....CLAIMANTS

VERSUS

MABATI ROLLING MILLS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants filed suit on 29th December 2011. In the suit the Claimants averred that they were employed by the Respondent on 1st July 1973 and 10th January 1982 respectively. They averred that their services were unlawfully terminated on 30th April 2011 on account of redundancy. It was averred that the Respondent refused, failed, and/or ignored to pay the Claimant their full redundancy dues. The Claimants sought one month's salary in lieu of notice, balance of severance pay which is 8 days for each completed year of service, gratuity and/or pension. The Claimants also sought compensation and general damages for unlawful or wrongful termination, costs of the suit and interest on the sums claimed and any other relief the Court may grant.
2. The Respondent was opposed to the Claim and filed a Memorandum of Reply on 27th March 2011. In the Reply, the Respondent averred that the Claimants were its employees only between 1st October 2000 and 30th April 2002. The Respondent averred that the Claimants were not members of the Union as they had resigned from union membership and thus could not rely on the collective bargaining agreement between the Respondent and the Union. It was averred that the Claimants were employed under a project in October 2000 and their contracts could be terminated on giving one month's notice. The Respondent denied that Claimants were entitled to gratuity and/or pension as claimed. The Respondent thus urged the Court to dismiss the Claimants suit with costs.
3. The 1st Claimant testified on 20th June 2013 and stated that he started working on 1st July 1973 in Steel Africa then Galsheet Kenya, and finally Mariakani Mabati Rolling Mills. He testified that he never entered new contracts with these companies and that he was informed that the terms and conditions remained the same. He testified that he was not paid according to the CBA in force. He had worked for 29 years and thus sought 2 months notice pay, general damages for the unlawful termination, costs and interest.
4. In cross-examination he testified that he was transferred from Galsheet to Mabati from 1st October 2000 and the pay and conditions of service remained the same. He admitted he was employed by

- Steel Africa Ltd from 22nd March 1973 and that he was a shift foreman and resigned from the Union since he was in a managerial position. He testified that he sought pay from Galsheet which related to his redundancy.
5. In re-examination he testified that he continued to have union dues deducted from his payslip by the Respondent. He testified that he was dismissed without cause.
 6. The 2nd Claimant testified on 13th October 2014. He testified that he was employed by the Respondent and started working in 1982. He was transferred from Steel Africa Ltd to Galsheet and his services were continued. He testified that union dues were paid by the Respondent to the Kenya Engineering Workers Union. He testified that he did not request to be paid redundancy dues and wondered why his services were terminated. He testified that he worked for 26 years and did not understand why he was not paid in accordance with the CBA.
 7. In cross-examination he testified that he was a machinist and was employed by the Respondent from October 2000. He confirmed that he resigned from the Union in 1997 and that he paid union dues. On being referred to his payslips for January 2001 and he confirmed there was no union dues deducted. He testified that there were union dues deducted in June, July and August 2001. He stated that he was entitled to severance pay and gratuity.
 8. In re-examination he testified that he was paid pension dues by Kenindia and that there was a check off system for union dues and no receipts were issued. He testified that the payments made to him were not in accordance with the CBA.
 9. The Respondent called George Karanja a HR Officer of the Respondent. He testified that he had joined the Respondent on 5th December 2011 and from documents held by the Respondent the 1st Claimant was employed by Steel Africa from 1973 and was transferred to Galsheet then to the Respondent from 1st October 2000 to 30th April 2002. He testified the Claimant was employed on the CGL project Mariakani and the reason for separation was redundancy as the project came to an end. He testified that the same reason for termination applied to the 2nd Respondent. He testified that both Claimants resigned from the union voluntarily. He testified that the CBA is applicable only to union members. He stated that at the time of the redundancy the Claimants were entitled to one month notice, accrued leave, severance pay at rate of 15 days for each year worked and provident fund. He testified that there were deductions made erroneously for union dues. He stated there is no letter from the Claimants asking to have union dues deducted. He testified the payments made to each of the Claimants was congrisant of the fact that they were in management positions hence the 15 days severance pay as opposed to the rate for Union members. He testified that the Claimants were paid their dues and the 1st Claimant received a total of Kshs. 138,680/- and the 2nd Claimant received Kshs. 77,374/-.
 10. In cross-examination he rejected the suggestion that he was not conversant with the matter and testified that from documents, one can tell what transpired. He testified that there were no union deductions except for some 3 months and that there was no documentation for the deduction. He maintained that the Claimants terms and conditions of service remained the same all through and that the transfer to Mariakani was to a CGL project. He testified the Claimants were in management and had resigned from the union. He conceded that there was nothing to show the resignations from union were voluntary. He denied the Claimants were terminated arbitrarily.
 11. In re-examination he testified that from the letters of resignation from union it was a voluntary resignation and the transfer was to a CGL project.
 12. The parties were to file written submissions but as of the time of writing the judgment there are none on the file.
 13. In the claim before me the Claimants assert that they were union members and were entitled to

additional notice period as well as more days in respect of severance pay. I heard the 2 Claimants and the Respondent's witness. It was not contested that payments under the pension scheme were received as well as terminal dues from the Respondent. The bone of contention was on the amounts. The Claimants were of the firm view that they were entitled to the terms and conditions under the CBA between the Respondent and the Kenya Engineering Workers Union. The Respondent was equally of the firm view the 2 Claimants were not members of the union having resigned voluntarily.

14. It is the Court's firm view that the non-membership of a union disentitles a party to negotiate as a union member. Before me are two letters penned by the Claimants resigning from union membership. There are payslips that show union dues deducted in June, July and August 2001. If indeed this is proof of union membership, it would have been consistent until the time of termination of the services. I have not seen any deductions after August 2001 and therefore if the two were union members there is no proof to back that up. I would hold therefore that the 2 were non union members at the time of the redundancy and could therefore not benefit from the provisions of the CBA in force at the time. Upon receipt of his terminal dues, the 1st Claimant signed a discharge voucher to the effect that he had received Kshs. 177,188.45 being his full and final dues and confirmed that he had no further, present or future claim against the Respondent. He signed the discharge on 30th April 2002. The 2nd Claimant also signed a similar discharge voucher indicating payment of Kshs. 144,422.75 on 3rd May 2002.
15. Once a party discharges another from all further, future or present claims, it means that the party discharging the other is precluded from seeking any other dues. The Claimants cannot resile from their accession to the discharge they signed. None signed without prejudice. In the premises I would hold that there is no recovery due at all.
16. I have agonized over the issue of costs. In the claim before me both parties have engaged counsel and have undoubtedly incurred costs. The Claimants engaged in a futile exercise under the mistaken apprehension that they were union members entitled to the dues a unionized employee can command. Unfortunately their surmise was wrong. The Respondent was an employer to the two for years and by dint of giving supervisory roles to the two elevated them to managerial positions. In the letter terminating the services of the 2 Claimants it would seem that the several requests the 2 made regarding payment of redundancy dues to conform to those of colleagues in Galsheet Unit III led to the redundancy declared. That is hardly a good to declare the project to which they were transferred to was now complete. I will therefore order each party to bear their own costs.

Orders accordingly.

Dated and delivered at Nairobi this 2nd day of February 2015

Nzioki wa Makau

Judge