



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

CAUSE NO. 373 OF 2014

TAILORS AND TEXTILE WORKERS UNION.....CLAIMANTS

VERSUS

AFRICAN COTTON INDUSTRIES.....RESPONDENT

J U D G M E N T

Introduction

1.The claimant union has brought this suit on behalf of her 22 members named in the suit (hereinafter called grievant). The suit seeks payment of Ksh 3,771,795.59 being terminal dues for unlawful redundancy of the grievants by the respondent in or about June 2014. The respondent has denied liability and contended that the termination was lawful and with the consent of the claimant vide a written agreement signed between the parties before the count Labour office. That after signing the said agreement the respondent deposited at the labour office, the dues payable for severance and salary in lieu of notice.

2 . The dispute herein was first lodged with the labour office by the claimant for conciliation and the same was settled on 18.6.2014 through signing of a memorandum of agreement. The said agreement was to the effect that the respondent was to pay the 22 grievants severance pay and wages in lieu of notice as per the collective bargaining agreement (CBA). That the claimant was not satisfied by the amount of money assessed by the respondent as per the said memorandum of agreement and she brought this suit. The suit was disposed off by written submissions and on the basis pleadings.

Analysis and Determination.

3. After careful consideration of the pleadings and the submissions before the court, there is no dispute that all the 22 grievants were employed by the respondent on diverse dates between 1993 and 3.6.2014 when they were all terminated through redundancy. There is no dispute that this dispute surrounding the said redundancy was lodged with the labour office and a settlement agreement was signed by the parties therein on 18.6.2014 before the County Labour Officer Mombasa. There is also no dispute that the agreement reached between the parties was that the respondent was to pay to the grievants severance pay plus pay in lieu of notice. There is further no dispute that in performance of her duty under the said settlement agreement, the respondent unilaterally assessed the dues payable to the grievants and deposited the same at the labour office for collection by the grievants. The issues for determination are:

a) whether the court should interfere with the settlement agreement for conciliation of this dispute signed on 18.6.2014.

b) what is the correct amount of terminal dues based on the said agreement signed on 18.6.2014 is payable to the grievants.

Interference with Conciliation Settlement.

4 .Under section 62 of the labour relations Act (LRA) a Trade Union has a right to report a trade dispute to the minister for labour for conciliation. If the trade dispute is settled in conciliation, the terms of the agreement must be recorded in writing, and signed by the parties to the dispute and the conciliator. Thereafter the signed copy of the agreement must be lodged with the minister as soon as it is practicable. However if the dispute is not resolved, any party may refer it to this court in accordance with the rules of the court.

5 . In this case, the trade dispute arose after the grievants were allegedly dismissed from work on 3.6.2014 after they refused to withdraw from the claimant trade union. On 4.6.2014, the claimant's Branch Secretary and all the grievants aired their complain through the media and as a result, the area County Labour Officer Mr Nyaga read the dispute from a newspaper and called the claimants Branch Secretary to his office and requested for some explanation about the dispute . There after the County Labour Officer called the respondent's Human Resource manager and his assistance to a meeting with the claimants at the labour office on 6.6.2014. No resolution on that day was reached and another meeting was convened on 18.6.2014 when a settlement agreement was signed.

6 .In the opinion of this court the above conciliation process was not founded on part VIII of the LRA because the dispute was not commenced pursuant to section 62 of the Act. There is no provision in the LRA that empowers a labour officer who learns about a trade dispute from the mass media to summon parties by phone calls for conciliation. Never the less, the court is satisfied that the parties voluntarily submitted themselves to the jurisdiction of the labor officer and signed a separation agreement in favour of the grievants. The agreement was not ambiguous and was not signed through mistake. Coercion, misrepresentation or in undue influence. By singeing the agreement voluntarily meant that the parties were acting in good faith and intended to be bound. Consequently the court will not interfere with the settlement agreement dated 18.6.2014 because there exists no compelling reason for that.

Dues Payable Under the Agreement.

7 . The settlement agreement dated 18.6.2014 partly states as follows:-

“it has been agreed that the complaints be paid as follows.

- 1. Severance pay for every completed year of service as per the CBA.***
- 2. Notice, pay as per the CBA Payment will be made by the end of June 2014.”***

8 . The CBA provides under clause 20 (e) that an employee who is declared redundant shall be entitled to severance pay at the rate of 21 days wages for each completed year of service for each. According to the claimant most of the grievants served for many years as casual and had become entitled to the terms and conditions of service for permanent employees within the meaning of section 37 of the EA. The claimant filed a schedule of the particulars of years of service for each of the 22 grievants. The shortest term served was from 21.2.2012 to 3.6.2014 while the longest term served was from May 1993 to 3.6.2014.

9.The respondent has however denied that grievants, are entitled to payment of severance for the period served before the year 2008. According to the respondent, the grievants had been terminated in the year 2008 and paid their terminal dues. The court has seen evidence of such payment in the vouchers dated between 31.3.2008 and 31.7.2008 which were only contested by the claimants in submissions from the bar.

10. This court is satisfied by the material placed before it that the grievants were laid off in 2008 and received payment of terminal dues. Whether the dues paid were full, is a different cause of action which ought to have been lodged with the labour office or the court before the cause of action lapsed 3 years after the year 2008 under section of 90 of the EA a time bar of 3 year for causes of action founded on employment has been set up. Consequently the court only awards severance pay to the grievants for the new contracts from 2009. The grievants worked for the respondent continuously for 2 or more years. They are consequently converted to employees whose terms and condition are regular under section 37 of the E. A. The grievants will therefore get severance pay at th rate of 21 days wages for each completed year of service.

11.As regards pay in lieu of notice, clause 17 of the CBA provides for one month notice before termination for employees who have served up to 5 years. On the other hand employees who have worked for 5 years to 10 years, the period of notice for termination is 2 months. In this case the shortest period served is 2 years while the longest period served from 2009 is slightly above 5 years. Consequently depending on the year of appointment each grievant, a pay in lieu of notice is awarded at the rate wages for one month or 2 months. The reason for limiting the period to 5 years is because the court has already made a finding above that the intimal employment contracts were terminated in 2008 and fresh contracts entered into on diverse dates thereafter.

12 .The summary of the award of service pay and pay in lieu of notice for each grievant is assessed hereunder. The court has considered the monthly wages contained in clause 27 of the CBA and the amounts pleaded by in page 10 of the claim. The court has also considered the wages quoted in the schedule prepared by the respondent in assessing the dues payable to the grievants which she deposited at the labour office Under clause 27 of the CBA, the lowest paid grievant in job group1 was entitled to a minimum basis salary of Ksh 11,552 per month. The lowest paid grievats according to the claim was Ksh 11220 per month while the highest was ksh 22331. No evidence was adduced by the claimant to support such wages.

13.According to the respondent the lowest paid grievant was ksh 9780.95 while the highest was Ksh 19530.70. Whereas it is easy to determine the lawful minimum pay from the CBA, it is not easy to determine the other grievats rightful minimum pay per month because the parties never pleaded the job group number for each grievants. There are however some cases where one can reasonably match the job group number of the grievatrs as pleaded under part III of the claim with clause 27 of the CBA. In that respect therefore one can find that the monthly wages used by the respondent to assess the terminal dues was lower than the minimum wages prescribed under the CBA. The court has therefore reassessed the terminal dues based on minimum wages under the CBA. Under clause 30 of the said CBA, the effective date was 1.9.2012 and was to remain in force for 24 months from that date. The grievants were terminated on 3.6.2014 and as such they are entitled to all their rights and benefits as envisaged under the CBA as assessed below.

14 John Wanjala (Machine operator carding department)

Two months' notice	25,498
Severance pay for 5 years	<u>44,621.50</u>
	<u>70,119.50</u>

Johana Ouma (machine operator carding department)

Two months' notice	25,498
Severance pay for 5 years	<u>44,621.50</u>
	<u>70,119.50</u>

Vyuta Travuha (packaging department)

Two months' notice 24,440

Severance pay for 5 years 42,770

67,210

Naftal Angiri (machine operator carding department)

Two months' notice 25,498

Severance pay for 5 years 44,621.50

70,119.50

Suleman Mwaruwa (Machine operator carding department)

Two months' notice 25,498

Severance pay for 5 years 44,621.50

70,119.50

Fred Simiyu (Machine operator carding department)

Two months' notice 12,749

Severance pay for 2 years 17,848.60

30,597.60

Mrs Said Suleiman (Parker in packaging department)

Two months' notice 24,440

Severance pay for 5 years 42,770

67,210

Fatuma Said Roba (Parker in packaging department)

Two months' notice 22,440

Severance pay for 5 years 39,270

61,710

Jamila Jemo Hasan (Packer)

Two months' notice 22,440

Severance pay for 5 years 39,270

61,710

Phyllis Mambeya (Packer)

Two months' notice 22,440

Severance pay for 5 years 39,270

61,710

Muhammed Juma Machine operator carding)

Two months' notice 25,498

Severance pay for 5 years 44,621.50

70,119.50

Edgar Luba Shukoli (Machine operator carding)

Two months' notice 25,498

Severance pay for 5 years 44,621.50

70,119.50

Bernard Onyango (plumber maintenance department)

Two months' notice 44,824

Severance pay for 5 years 78,442

123,266

Ruphus Mambeya (Plumber maintenance department)

Two months' notice 25,498

Severance pay for 5 years 44, 64.50

70,119.50

Denis Katembe (Machine operator bleaching department)

Two months' notice 25,498

Severance pay for 5 years 44,621.50

70,119.50

Titus M Kehare (operator carding)

Two months' notice 25,498

Severance pay for 5 years 44,621.50

70,119.50

Rajab Chidangu (Electrical maintenance)

Two months' notice	39061,40
Severance pay for 5 years	68,357.45
	<u>107,418.85</u>

Maina Waiganjo(Operator bleaching)

Two months' notice	12,749
Severance pay for 3 years	<u>26,772.90</u>
	<u>39,521.90</u>

Suleiman Okumu (operator carding)

Two months' notice	25,558
Severance pay for 5 years	<u>44,621.50</u>
	<u>70,179.50</u>

Mrs. Reverence Mbaji (Gardener)

Two months' notice	24,440
Severance pay for 5 years	<u>42,770</u>
	<u>67,210</u>

Gilbert Simiyu (Operator carding)

One month notice	25,498
Severance pay for 5 years	<u>44,621.50</u>
	<u>70,119.50</u>

Dominic Olwenyi (Operator carding)

Two months' notice	12,220
Severance pay for 2 years	<u>17,108</u>
	<u>29,328</u>

15. On 7.4.2015 and 8.7.2015 the parties agreed before the court that all the issues in this suit had been settled except the issue of pay in lieu of notice and severance pay due to the grievants consequently, the court will not consider and determine the issues of leave days and salary arrears for days worked before termination. From the record, the dues in that respect has already been deposited at the labour office.

Disposition

16. For the reasons stated above, judgment is entered for the claimant on behalf of the grievants in aggregated sum of Ksh 1,488,266.85 to be shared as summarized above. The claimant will also have costs of the suit. The money deposited by the respondent at the labour office Mombasa for notice and severance pay shall be released to the claimant forthwith as part of payment of the sum awarded herein. Similarly the money deposited for leave and salary shall also be released to the claimant forthwith as it is not in dispute. It is so ordered.

Dated and Delivered at Mombasa this 23rd day of October 2015.

ONESMUS MAKAU

JUDGE

23.10.2015

Coram

Before Justice Onesmus Makau

C/Assistant -

For the Claimant:

For the Respondent:

Court

Judgment delivered in their presence/absence in open court.

ONESMUS MAKAU

JUDGE