

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 1130 OF 2010

BETWEEN

TRANSPORT AND ALLIED WORKERS UNION..... CLAIMANT

VERSUS

EVEREST ENTERPRISES LIMITED..... RESPONDENT

Rika J

CC. Mr. Kidemi

Mr. Nasib Makuwa Industrial Relations Officer, appearing for the Claimant

Mr. Peter Njeru instructed by Kaplan and Stratton Advocates for the Respondent

ISSUE IN DISPUTE: REDUNDANCY PAYMENT

AWARD

1. The Claimant filed this Claim on 27th September 2010. The document initiating the Claim is not described to be a Statement of Claim, Application or any form of pleadings known to the Industrial Court [Procedure] Rules 2010. The Claim is made on behalf of 18 Grievants, who allege to have been former employees of the Respondent. The Claimant states the Grievants' contracts were terminated on 3rd March 2007. The Claim was only filled on 27th September 2010.

2. The Court is in agreement with the Respondent that the Claim is improperly in Court. The Claimant States that the Grievants should be paid terminal dues in accordance with Section 40 of the Employment Act 2007. They left employment before the enactment of the Employment Act 2007, and that law is inapplicable to them. The Trade Union ought to have sought remedies under the old Employment Act Cap 226 the Laws of Kenya, and approached the Court under the procedure set out in the Trade Disputes Act Cap 234 the Laws of Kenya, as read together with Section 84 of the Labour Relations Act Number 14 of 2007.

3. Even assuming the Employment Act 2007 was applicable to the dispute as invoked by the Claimant, the Claim and the Reliefs sought would be barred under Section 90 as submitted by the Respondent. The Court is not able to assist the Grievants in the circumstances. The Court has also noted that the Grievants seem to have used a multiplicity of Trade Unions in pursuit of their Claim at the Ministry of Labour. There were different reports, made by different Trade Unions, over the same Employees and same subject matter. This involvement of different Trade Unions is irregular. On 14th December 2007, another Trade Union Kenya Union of Commercial, Food, and Allied Workers reported a Trade Dispute to the Minister over the same issue. The Court would not be in a position to tell if the records brought by the Claimant to Court, are complete records of the history of the dispute. This problem is compounded by the fact that the Grievants did not give evidence, the Claimant having opted to rely on the sketchy documents available to it. How would the Court know what was the outcome of the different reports made to the Minister? ***In the view of the Court, the Claim is incurably defective and is hereby struck out with no order on the***

costs.

Dated and delivered at Nairobi this 22nd day of January 2014

James Rika

Judge