



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 282 OF 2012

BETWEEN

GEORGE WESONGA OJWANG'APPLICANT

VERSUS

THE KENYA NATIONAL UNION OF TEACHERS(KNUT).....RESPONDENT

RULING

The Court granted an Award in favour of Mr. George Wesonga Ojwang on 20th December 2013. It was ordered the Respondent pays his terminal benefits of Kshs.16,616,209.70 within 30 days. Mr. Ojwang is the former Chairman of the Respondent Teachers' Trade Union.

The Respondent filed a Notice of Appeal dated 10th January 2014, and has applied for Court proceedings, intending to lodge an appeal at the Kenya Court of Appeal.

This was followed up with an Application for Stay of Execution filed by the Respondent on 17th January 2014.

The Application is supported by the Affidavit of Secretary General Wilson Sossion, sworn on 17th January 2014, while the Claimant relied on Grounds of Opposition dated 23rd January 2014.

The Application was heard on 23rd January 2014.

Upon evaluating the submissions made by Mr. Awele for the Respondent, and Ms. Kamar for the Claimant, the *Court finds and Orders:-*

1. There are no recondite matters of Law raised by the Respondent in its intended Appeal. The parties agreed to have the dispute determined on the basis of their pleadings, submissions and bundles of documents filed. The Supplementary list of Documents filed by the Claimant on 20th February 2013 was filed with the knowledge and consent of the Respondent. The Agreement of 2nd February 2011 involving Mr. Ojwang, Mr. Osiany and Mr. Mutisya is similarly part of the record, and it is difficult to see why the Respondent should be questioning their probative value at this late hour.

2. An Appeal to the Court of Appeal is in any event, confined to matters of Law under Section 17(2) of the Industrial Court Act 2011 and rule 27(4) of the Industrial Court (Procedure) Rules 2010. It is highly

doubtful that the Minutes, and the Agreement in question, comprise such matters of Law. This Court has taken the position in applications for Stay of Execution, that applicants must demonstrate there are *recondite* matters of Law raised by the intended appeal. It would be calamitous to the principle of fair administration of justice if the Industrial Court is to grant Stay of Execution simply to enable a party pursue a second opinion, to use the Respondent's words. The right of appeal should not be taken as a transfer of jurisdiction, where matters of fact and law are regurgitated in another Superior Court, otherwise Section 17 (2) of the Act and Rule 27 (4) would be meaningless.

3. The Award involves retirement benefits that have been contested from the year 2011. The parties were given adequate opportunity to settle out of Court. The role of the Industrial Court is to ensure disputes such as this, involving vulnerable employees, are resolved with a minimum of delay. Mr. Ojwang' is an old man who has rendered his service to the society and retired, and who is presumed to have no regular income. He needs social protection. It is the role of this Court to accord him social protection. It would not make sense to have the Industrial Court as a specialized jurisdiction, if its decisions and resultant decrees are to be treated like any other decisions or decrees from the Civil Jurisdiction. While the Court agrees with Mr. Awele that in issue is a monetary decree, the Court must exercise caution by not treating an Award whose purpose is to enable a retired employee access social security, as a monetary decree in a commercial dispute.

4. Decisions availed by the Respondent on the principles of Stay of Execution must therefore be read within this context. All of them originate from commercial relationships, not employment relationships. The latter has its own characteristics.

5. The Respondent questions the probative value of the Documents on record. The Court is faulted for putting reliance on unsigned minutes. The Respondent does not dispute ownership of these minutes. Parties agreed to have the bundles of documents filed. This Court in any case, conducts its proceedings without undue regard to technicalities and is not bound by rules of evidence except where conducting criminal matters such as may relate to wage offences. This is provided for under section 20 of the Industrial Court Act, and Rule 24 (3) of the Industrial Court (Procedure) Rules 2010, which specifically states that the Court shall not be bound by rules of evidence under the Evidence Act. This is the position, and has been the position under Section 24(1) of the Labour Institutions Act, as carried over from Section 21 of the Trade Disputes Act. Informal documentation is the hallmark of the Industrial Justice System.

6. The Respondent has not offered anything to Mr. Ojwang out of the Award found due by the Court. Even the paltry sum of Kshs.270,000 which the Respondent acknowledged it owes to the retired Mr. Ojwang, has not been paid. How would the Court exercise its discretion in favour of the Respondent? The conduct of the Respondent disentitles it orders that would have the effect of delaying settlement. The Respondent's current financial status should not be a good reason to with-hold retirement benefits of its former chairman, which ought to have been paid in 2011. As submitted by Ms. Kamar, the Claimant's retirement did not happen at the drop of a hat; it was a lengthy process that ought to have been factored in the successive budgets of KNUT from the time the Claimant's retirement was announced. *IT IS ORDERED:-*

(a) The Application dated 16th January 2014 is rejected;

(b) No order on the costs.

Dated and delivered at Nairobi this 28th day of February 2014

James Rika

Judge