



REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 497 OF 2013

(Before D.K.N. Marete)

TAILORS AND TEXTILES WORKERS UNION.....CLAIMANT

Versus

VAJAS MANUFACTURERS LTD.....RESPONDENT

JUDGEMENT

This matter was brought to court vide a statement of claim dated 5th April, 2013. The issue in dispute is therein cited as;

‘Collective Bargaining Agreement (CBA) clause

- i. ***Redundancy***
- ii. ***Retirement***
- iii. ***Termination.***

The respondent in an undated respondent’s memorandum of reply and submission opposes the claim and prays that the same be dismissed with costs. The response is filed on 2nd September, 2013.

The claimant’s case is that she is a registered union representing employees in tailoring, garment making and textiles whereas the respondent is a garment and textiles factory. Both parties have a Recognition Agreement and Collective Bargaining Agreement that binds them on the issues of dispute.

On 23rd May, 2012, the claimant’s Secretary General gave proposals to the respondent’s Managing Director. These were negotiated *inter parties* at a meeting on 19th February, 2012. They reached a deadlock.

On 6th July, 2012 he union referred the matter to the Ministry of Labour who appointed a conciliator but the parties again disagreed and were advised to refer the matter to court. The claimant accuses the respondent of unreasonably refusing the proposals and offers on the three items without making a counter offer. He prays as follows;-

17. *That, the three (3) clauses that is Retirement clause, Redundancy clause and Termination clause be ordered and awarded as proposed by the claimant*

Or

The Respondent is ordered as follows:-

18. On Redundancy (Clause 16)

Union proposes – 25 days with the same wordings

19. On Retirement (Clause 24)

The clause remains with same wordings but with a ride on which shall read “so long as the said affected employees has attained fifty (50) years of age”

20. On Termination (Clause 7)

Union proposes

0 – 5 years – 15 days per year worked

6 – 10 years - 17 days per year worked

11 - 15 years – 18 days per year worked

16 – 20 years – 21 days per year worked

21 years and above – 30 days per year worked.

21. Collective Bargaining Agreements in reference e.g Fine Spinners Limited who are offering twenty (20) days per year, Ritz Enterprises who are offering 15 days per year among other Textile Companies (see copies attached).

*22. **That,** the Respondent made to pay costs to this case for the claims now in deadlock as the Respondent has failed to give any offer.*

*23. **That,** the claimant’s proposed Collective Bargaining Agreement i.e here attached for orders as requested above. **(See Annex VJ 1B).***

24. We therefore appeal to the court to order for the above prayers as we have met all the requirements as required in the Labour Laws of Kenya.

25. Cost and interest in this dispute.

The respondent in response disputes an increase in severance pay from 18 days to 25 days on grounds that redundancy is normally preceded by poor performance of the company. Moreover, Section 40, Employment Act 2007 provides for 15 days for years served and thus 18 days should not be acceptable.

On retirement, the union proposes that retirement age be increased from the current 50 and 45 years for male and females respectively to 60 years for both. He opposes this and submits that the law has left it open and therefore to the discretion of the parties. The claimant has not, in any case justified the same.

On the last item, termination is rejected on grounds that the employees are members of NSSF and remissions are made to the fund. The fund is the process of converting into a pension scheme which would capture the interests of the employees. Further, S.35(5) of the Employment Act, 2007 provides for service pay for every year worked. He therefore prays that the claim be dismissed for lack of merit.

The matter came for hearing severally until the 27th September, 2013 when they agreed to dispose of the

matter by way of written submissions.

The issues for determination therefore are;

1. Is the refusal by the respondent of the proposed Collective Bargaining Agreement clauses reasonable?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this suit?

In his written submission the claimant reiterated his position on the claim. He justifies a claim of 25 days on redundancy on ground that 18 days were negotiated in 2010 and ever since inflation and life styles have really changed and affected workers. The introduction of Value Added Tax on basic commodities has made hell out of life. He also submits that ordinarily Collective Bargaining Agreements should bring out better terms than the law on the subject.

On retirement age, 60 years is the public policy, mood and opinion and therefore this proposition scarcity of employment necessitates retention and therefore proper management of the employees' welfare.

The demand for retirement is a causative of the misconduct of the respondent and therefore justified. It arises out of inconsiderate and unconscionable labour relations exercises by the respondent thus calling for a caution and fall back for the employees.

The arguments and submissions of the respondent on the subject are to me merely evasive. These are not intended to resolve the current labour relations stalemate *inter parties* and therefore the need for the court to determine the same. I therefore conclude and find that the refusal by the respondent of the proposed Collective Bargaining Agreement is mischievous and a poor practice of industrial relations. The respondent is entitled to the relief sought and I order the same as follows;

1. **THAT** employees declared redundant to be paid at 21 days per each completed years of service.
2. **THAT** the retirement age be increased to 60 years for all employees.
3. That, employees terminated be paid as proposed herein below;
 - i. 0 - 5 years – 15 days pay each completed year of service
 - ii. 6 – 10 years – 17 days “ “ “ “ “ “
 - iii. 11 – 15 years – 18 days “ “ “ “ “ “
 - iv. 16 – 20 years – 22 days “ “ “ “ “ “
 - v. 21 years and above – 26 days “ “ “ “ “ “
4. The costs of this suit shall be borne by the respondent.

Delivered, dated and signed the 24th day of April, 2014.

D.K. Njagi Marete

JUDGE

Appearances:

1. Wycliffe Omondi for the claimant union.
2. Mr. Abenge instructed by the Federation of Kenya employers for the respondent.