



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**

**(BIMA TOWERS)**

**CAUSE NO. 333 OF 2013**

**KENYA SHOE & LEATHER WORKERS UNION.....CLAIMANT**

**v**

**SLAPPER SHOE INDUSTRIES LIMITED..... RESPONDENT**

**JUDGMENT**

1. The Kenya Shoe & Leather Workers Union (Union) filed a Memorandum of Claim against Slapper Shoe Industries Ltd on 8 October 2013 stating the issue in dispute as *unlawful redundancy of seventeen employees* (Grievants) and seeking reinstatement.
2. The Union and the Respondent have a valid recognition agreement and a Collective Bargaining Agreement entered into on 1 April 2011.
3. On 10 June 2013, the Union reported a trade dispute to the Cabinet Secretary, Labour alleging unlawful redundancy of some 17 Grievants and the Secretary appointed a Conciliator who gave out a report dated 28 August 2013. The Union did not agree with the findings and recommendations of the Conciliator.
4. After service of Notice of Summons, the Respondent filed a Response on 4 December 2013 admitting employing the Grievants on 1 year renewable contracts and that the contracts were extended but eventually expired on 31 May 2013. The Respondent gave low volumes as a reason for not extending the contracts and further pleaded that all the Grievants were paid terminal dues.
5. It is not disputed that the Grievants were employed at different times and issued with fixed term renewable contracts. The terms and conditions set out in the contracts are similar in all material respects.

**Questions arising**

6. The questions arising from the parties pleadings are therefore primarily two, whether the Grievants were declared redundant unfairly or did the contracts expire by effluxion of time and what would be appropriate remedy if it was a case of unfair redundancy.

**Whether Grievants were declared redundant unfairly or contracts expired by effluxion of time**

7. Clause(s) 2 of all the contracts exhibited were clear that the duration was 1 year renewable at the sole discretion of the Respondent. The contracts were variously renewed or extended.
8. On 28 May 2013 the Respondent's Human Resources Manager wrote to the Chief Accountant notifying him that the Grievants contracts would not be renewed and asking him to arrange to pay them terminal dues.
9. The way the Grievants cause(s) of action were pleaded, it is not open to the Court to go outside the

- terms of the contract and examine the reasons for the non renewal or whether they were declared redundant unfairly. The Union did not even suggest that the Grievants had a legitimate expectation that the contracts would be renewed further based on the practice or policy of the Respondent to renew them previously. Nor was it suggested that failure to renew the contracts in the context of the previous renewals was an unfair labour practice.
10. In the light of the documentary evidence placed before the Court, the Court is unable to reach any other conclusion apart from that the Grievants contracts came to an end by effluxion of time and that the Respondent opted not to renew them.
  11. The Court also observes that failure to renew a fixed term contract has not been placed under the statutory regime of unfair termination/wrongful dismissal by statute unlike what has been provided for in section 186(b) of the Labour Relations Act of South Africa or section 95 of the Employment Rights Act, 1996 of England.
  12. In these two jurisdictions, because of the statutory regime, failure to renew a fixed term contract, has been suggested, could amount to a declaration of redundancy (see *University of Stirling v University and College Union*, UKEATS/0001/11/B1 from the Employment Appeal Tribunal of the United Kingdom). But that is not a discussion appropriate in this case.
  13. The Court takes note of the authorities cited by the Respondent and more particularly *Sammy Muhia & Others v KPLC Co. Ltd* (2006) eKLR. The Court has not taken into consideration this authority because the legal framework in place when it was decided was fundamentally different to the one obtaining since the promulgation of the Constitution 2010 and the Employment Act, 2007. There is now a right to fair labour practices, a position which did not obtain under the old Constitution.
  14. The Constitution and the Employment Act, 2007 have created a seismic shift as far as employment relationship is concerned and placing reliance on cases which were decided on the basis of the old Constitution and the Employment Act, cap 226 (now repealed) must be done with a lot of caution.
  15. The natural consequence of the above discussion is that the Memorandum of Claim filed in Court on 8 October 2013 should be dismissed and it is ordered dismissed.
  16. There will be no order as to costs.

**Delivered, dated and signed in open Court in Mombasa on this 16<sup>th</sup> day of May 2014.**

**Radido Stephen**

**Judge**

**Appearances**

Mr. Julius Maina, General Secretary

Kenya Shoe & Leather Workers Union for Union/Grievants

Mr. Molenje, Senior Legal Officer,

Federation of Kenya Employers for Respondent