



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 25/2014

(Before Hon. Justice Hellen Wasilwa on 30th June, 2014)

KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERSCLAIMANTS

-VERSUS-

RUCHU GARAGE FARMERS CO-OP SOCIETY LIMITEDRESPONDENTS

RULING

The application before court is one for review of this court's judgment delivered on 18.12.2012. The application is dated 30.5.2013 and is brought by the applicants through a Notice of Motion and brought under Sections 3, 12 and 16 of the Industrial Court Act 2011, Rule 32 of the Industrial Court (procedure) Rules 2010, Section 87 of the Employment Act 2007 and all the inherent powers of the court.

The applicants seek orders that this court reviews it's judgment delivered on 18.12.2012 and in particular Clause 3 of the orders therein.

The application is based on the grounds that:-

- 1. The parties to the dispute had a Collective Bargaining Agreement which was in force at the time of the hearing of the dispute.**
- 2. That the Hon. Court, in the issue in dispute as at the time of trial was unlawful termination of Mr. Mwaniki & failure to pay Mr. Mwaniki Mwangi terminal benefits as provided for in the Collective Bargaining Agreement.**
- 3. That the Hon. Court erroneously tabulated severance pay based on 15 days instead of two months provided for in the Collective Bargaining Agreement.**
- 4. That the grievant is likely to lose Ksh 96,360 which is provided for in the Collective Bargaining Agreement if the same is not corrected.**

The application is also supported by the supporting affidavit of **Peter Ngugi** herein the claimant's Assistant Secretary General.

The respondents opposed this application and filed their grounds of opposition on 3.4.2014. They also filed their skeletal submissions on the same day. They however failed to attend court to argue their

application on 20.6.2014, the day fixed for hearing by consent. In their grounds of opposition, they had submitted that the application was not merited and did not raise any new issue that was not within claimant's knowledge and neither was there any error apparent on the face of the record as the Collective Bargaining Agreement was exhibited in court and there is no justification to review the award given by court. They also submitted that the Collective Bargaining Agreement seeking to be relied upon is invalid having been submitted to court for registration beyond 14 days provided by law under S. 60 of the Labour Relations Act 2007.

Having considered submissions of both parties, I refer to the law governing review of court orders under S. 16 of the Industrial Court Act 2011:-

“The court shall have power to review its judgments, awards, order or decrees in accordance with the Rules.”

The guiding rule is rule 32 of the Industrial Court (Procedure) Rules 2010 which states as follows:-

“(1) A person who is aggrieved by a decree or an order of the court may apply for a review of the award, judgment or ruling-

(a) If there is a discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made,

or

(b) On account of some mistake or error apparent on the face of the record; or

(c) On account of the award, judgment or ruling being in breach of any written law; or

(d) If the award, the judgment or ruling requires clarification or

(e) For any other sufficient reasons.”

The law applicable is clear for which reasons the court may review its order. The applicants have come seeking review of my judgment and their main contention is that there is an error apparent on the record as the court calculated the severance pay based on 15 days worked instead of two months provided for in the Collective Bargaining Act.

The respondents raised an objection on the validity of the Collective Bargaining Agreement, the same having been registered more than 14 days after the signing as provided for under S. 60(1) of the Labour Relations Act 2007. It is true that S. 60(1) of Labour Relations Act 2007 provides that every Collective Agreement shall be submitted to the Industrial Court for registration within fourteen days of its conclusion. However, the fact of its registration validates the Collective Bargaining Agreement even after submitted beyond 14 days of its conclusion. This is because the court, does not blindly register Collective Bargaining Agreements. There are parameters the court follows and may even refuse to register one.

Under S. 60(7)(a) of Labour Relations Act:-

“The Industrial Court may register a Collective Agreement within fourteen days of receiving it.”

The wording of this Section is not couched in mandatory terms and the fact that the Collective Bargaining Agreement was registered after 14 days does not invalidate its authenticity.

The issue now then is whether there is an error apparent on the record which would warrant review of the

court's order. I notice that in computing. The 11 years severance for the claimant, I based it on 15 days salary for each year worked. The claimant had asked court to compute the amount as per their Collective Bargaining Agreement. It was error for the court to proceed to compute it at 15 days for each year worked whereas Article 5 of the Collective Bargaining Agreement, categorized the calculations depending on length of time served. In case of claimant applicants, he had served for 11 years from 1999 January to February 2009 when he was dismissed. Under Clause 5(viii) then what was due to him would have been referred to a joint Committee of the Co-operative and Trade Union. There is no proof that this was even done but relying on Clause 5(vi) of the Collective Bargaining Agreement, this would have been at least 12 months.

In the circumstances, I review what was payable to applicants in terms of order No. 3 from 15 days salary for each year worked 32,120/= to 1 month for each year worked;

$$= \text{Ksh } 32,120 \times 2 = \underline{\text{Ksh } 64,240/=}$$

No order as to costs.

HELLEN WASILWA

JUDGE

30/6/2014

Appearances:-

Omolo h/b Nyange of Mbiyu Kamau for respondents present

N/A for Applicants

CC. Wamache