



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI
INDUSTRIAL CAUSE NO. 115 OF 2013

KENYA UNION OF COMMERCIAL FOOD

AND ALLIED WORKERS.....CLAIMANT

VERSUS

LIMURU MILK PROCESSORS.....RESPONDENT

JUDGMENT

1. By a memorandum of claim dated 26th September, 2013 the claimant Union on behalf of some 35 grievants seeks orders from this court directed to the respondent that they pay the said grievants their redundancy pay as stipulated by section 40 of the Employment Act.
2. According to the Union, the respondents' declared the grievants redundant contrary to the provisions of section 40 of the Employment Act and further despite the wrongful declaration of redundancy the respondent has failed to pay the grievants their terminal dues despite communicating in writing to the grievants that they will do so.
3. In support of the claim, the Union has attached the following documents:-
 - (a) *CBA - and referred the court to clause 14(c).*
 - (b) *Letter dated 1st October, 2012 as a sample redundancy letter sent to all the grievants.*
 - (c) *Letter dated 2nd October, 2012 from the Union to the respondent disputing the declaration of redundancy.*
 - (d) *Letter dated 20th November, 2012 from the Union to the Ministry of Labour and Human Resource Development regarding the existence of a dispute in accordance with section 62 of the LRA.*
 - (e) *Letter dated 30th January, 2013 from the Ministry admitting the dispute and appointing Mrs. Guchu as a conciliator.*
 - (f) *Letter dated 27th March, 2013 from Mrs. Guchu calling the parties to a meeting over the dispute and pointing out failure of an earlier meeting to take place due to the absence*

of the management.

(g) Letter dated 30th April, 2013 certifying inability by the conciliator to resolve the dispute and asking parties to take the dispute to the next level of conciliation.

(h) Document AK 1 tabulating what the claimant Union thinks are the redundancy dues for the grievants.

4. The respondents through memorandum of response filed by their advocate denied issuing redundancy letters to the grievants. The respondent further avers that it did not declare the claimants redundant but instead entered into a long lease agreement which gave the lessee the discretion to allow the claimants to continue with employment in the position they served before the lease.
5. The respondent further avers that it “normally” terminated the grievants employment on 1st October, 2012 and paid them their dues under normal termination of employment. To these averments, the respondent unlike the claimant Union did not attach any supporting documents as required by the rules of this court.
6. When this case came up for hearing on 27th March, 2014 only the claimant Union appeared. The Court upon being satisfied that the date was taken by consent directed that the same proceeds by way of written submissions limited to the issue whether there was actually a declaration of redundancy and if so, if it was contrary to the provisions of the Employment Act and the existing CBA.
7. From the above, I have attempted to review the pleadings by both sides and noted that whereas the claimant Union has elaborately attempted to explain the nature of the grievants complaint and attached what in their view, are supporting documents, the respondents on its part has made bare denials in their memorandum of claim. For instance the letter dated 1st October, 2012 clearly informs one of the grievants that the Board of Directors had resolved that he be declared redundant with effect from the date of the letter. The letter further informs him that the accountant is instructed to compute his final dues for payment including payment lieu of notice, prorated leave and severance pay less any indebtedness to the company. In contrast, whereas the respondent avers that the grievants were terminated “normally” and their dues paid, nothing is attached to vouch for the averment. Further, despite alleging that the respondent entered into a long term lease agreement in which the lessee had discretion whether or not to retain the grievants in employment no such agreement or evidence thereof has been attached as required by the rules.
8. From the foregoing circumstances, the court is reasonably persuaded that the respondent did not follow the law in declaring the grievants redundant. Section 40 of the Employment Act sets out the procedure to be followed before an employer can declare its workers redundant. Nothing has been shown by way of pleadings or supporting documents that the respondent complied with law. In the circumstances the court hereby declares that the declaration of redundancy actually took place and the grievants are entitled to be compensated as provided for under section 40 of the employment Act and the operating CBA at the time of declaration of redundancy.
9. The court hereby orders that the grievants be paid as tabulated by the claimant Union in annexure AK 17 attached to the memorandum of claim herein.
10. It is so ordered.

Dated at Nyeri this 6th day of June, 2014.

ABUODHA N. J

JUDGE

Delivered in open Court in the presence of Mr. Munda holding belief for Kinyua Advocate for the Claimant and in the absence of the Respondent.

ABUODHA N. J

JUDGE