



IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 105 OF 2014

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

KENYA UNION OF PRINTING,PUBLISHING, PAPER MANUFACTURERS AND

ALLIED WORKERS CLAIMANTS

-VERSUS-

HIGHLAND PAPER MILLS LTD RESPONDENTS

RULING

The application before court is the one dated 25.6.2014. The application was filed by the applicants herein under certificate of urgency seeking to restrain the respondents herein from declaring 7 employees redundant.

The applicants contend that the main aim of the respondents declaring the 7 grievants redundant is to reduce the bargaining power of the union with the aim of replacing the 7 employees with casual labourers. This application is supported by the annexed supporting affidavit of one **Rajabu W. Mwondi**, the Ag general secretary of the claimant's union.

In his affidavit, the deponent aver that the respondents have been bent on reducing their employees and this is seen from their trend whereby in December 2013 the work force was 21 employees and 9 casuals. In the same month 12 employees were declared redundant and 9 remained. In January there were 9 employees and 8 casuals. In May 2014, there were 9 employees and 12 casuals. Now the respondents wants to declare 7 redundant and leave 2 plus 12 casuals.

The applicants further avers that it is the respondents aim to engage employees on contract basis in order to prevent them from being members of the union.

The respondents opposed this application. It is their position that the issue of redundancy does not arise as the factory closed down on 26.6.2014 and the 7 employees have resigned. They have attached their resignation letters to their reply. They now have only 3 employees remaining.

I have considered the submissions of both parties. S. 40(1) of the Employment Act 2007 elaborates on what procedure should be followed before an employer declares an employee redundant. The procedure set out is as follows:-

(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—

(a) Where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

(b) Where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

(c) The employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees

affected by the redundancy;

(d) Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

(e) The employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

(f) The employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

(g) The employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each

completed year of service.

The applicants have not told this to court that the respondents are not adhering to these procedure. It would therefore be premature for this court to order the respondents not to declare the grievants redundant. In the circumstances, I would direct that the issue of the redundancy be handled by the labour officer and a report be made to court in due course. In the meantime, the *status quo* be maintained.

HELLEN S. WASILWA

JUDGE

30/7/2014

Appearances:-

Wamboye for claimants present

Nyaga h/b Shilenje for Respondents

CC. Wamache