



IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 2043 OF 2013

BETWEEN

KENYA SHOE AND LEATHER WORKERS UNION CLAIMANT

VERSUS

PLASTIC AND RUBBER [2005] LIMITED RESPONDENT

RULING

1. There are two applications subject matter of today's ruling. The first was filed by the Claimant Union on 20th December 2013, seeking to restrain the Respondent from declaring ten positions held by the Claimant's Members at the Respondent, redundant. Interim Orders issued allowing this application, on 20th December 2013. Extension has been granted by consent subsequently.

2. The second application was filed by the Respondent on 28th January 2014, seeking to have the Orders granted on 20th December 2013 set aside, and seeking an Order that the Claimant files an undertaking 'as to damages within three days.'

3. The Parties have been negotiating settlement out of Court, but appear to have stalled, culminating in their agreement in Court to file submissions on the two applications and have the Court determine the applications on the basis of their submissions.

Upon consideration of the two applications, affidavits, and submissions filed by the respective parties, the Court Finds:-

4. The Claim of this nature should ideally be heard in full and a final determination given, without undue delay. The Respondent, if it is true it has experienced a genuine redundancy situation, must not be unnecessarily hampered in keeping its business afloat.

5. The Claimant's Members, on the other hand, must be protected from having their contracts terminated, particularly if there is prima facie evidence to show the Respondent has not experienced a genuine economic glitch, and is merely using the declaration of redundancy to achieve some other objective, such as the weeding out of union members from the employment place, as suggested in the Statement of Claim.

6. The Court has observed that the Parties have a Recognition Agreement and have concluded a CBA, guiding their Industrial Relations. The Respondent initially wrote to the Claimant on 28th October 2013, notifying the Claimant of the intended redundancy. The Respondent invited the Claimant for consultations to be held two days later on 31st October 2013. The Claimant responded on 29th October

2013, protesting that the notice was too short, and that the redundancy decision had not been arrived at by the Respondent overnight. The Claimant asked for adequate notice. The Respondent stated it rescheduled the consultative meeting to 5th November 2013, when the Parties met and agreed on redundancy and terms of exit. The minutes of this meeting were not made available to the Court, but subsequently, the Respondent issued the affected Employee termination notices on 3rd December 2013, to become effective 31st December 2013, which paved the way for this litigation.

7. The Court is of the view that the Parties did not have adequate consultations, and there was need to engage in conciliation at the Ministry of Labour, before escalating the dispute to the Industrial Court for adjudication. The Central Planning and Monitoring Unit [CPMU] has not been engaged. The allegation by the Respondent that it has encountered an economic downturn has not been enquired into by the CPMU. There are no Financial Statements to establish the financial status of the Respondent. The assertion that there is a problem of an economic nature, has not been given prima facie proof by the Respondent, or been discounted by the Claimant. There has been no investigation carried out independently by the CPMU which traditionally has served as the economic secretariat to the Industrial Court. The Parties did not attach any minutes of their discussions and show the Court that they have exchanged any economic data. It would be impossible to conclude that there is, or there is not, a genuine redundancy situation, without having seen some form of rudimentary economic data. It is likewise difficult for the Court to rule on the procedural requirements of the process in the absence of minutes of the meetings between the Parties, shedding light on the level of consultations, criteria for selection of the affected Employees, and illuminating the reasons for, and extent of the redundancies. The Court is of the view that its intervention, beyond facilitating the Parties' further in a constructive engagement, and in retaining the status quo, is inappropriate at this time. *It is ordered:-*

[a] The Dispute is hereby referred to the Cabinet Secretary in charge of Labour, under Section 15 of the Industrial Court Act 2011.

[b] The Cabinet Secretary to appoint a Conciliator who shall undertake conciliation within a period of 90 days, and issue certificate, and record or evidence of the conciliation meetings, under Section [15] 3 of the Industrial Court Act 2011.

[c] The CPMU to prepare and make available to the Parties, a Report with regard to the financial position of the Respondent Company, which Report shall be filed in Court, and availed to the Conciliator and the Parties within 30 days of the delivery of this ruling.

[d] The Respondent to make available to the CPMU and the conciliator, its full Financial and Employment Records for the relevant period.

[e] The Claimant Union shall meet the costs of the CPMU report.

[f] In the meantime the Parties to retain the status quo; and, further Court proceedings are suspended, until the Conciliator's certificate is filed in this Court at the end of the 90 days.

[g] The Claimant to ensure this Order is extracted and served on the Cabinet Secretary for compliance forthwith.

[h] Parties to take a mention date at the Court Registry for further Orders, upon closure of the conciliation process.

Dated and delivered at Nairobi this 8th day of July 2014

James Rika

Judge

