



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 123 of 2012

TAILORS & TEXTILE WORKERS UNION.....CLAIMANT

v

SENIOR BEST GARMENTS (EPZ) LTD.....RESPONDENT

RULING

1. The main Cause came up for hearing before me on 20 March 2013. Mr. Odhiambo, an official of the Tailors & Textile Workers Union (the Union) on behalf of the Grievants indicated that he would not call any oral evidence in support of the Union's case. He stated that he wished to rely on the pleadings and oral submissions which he proceeded to make.
2. At the close of his submissions and before Dr. Khaminwa could respond, I drew his attention to the fact that the Union was seeking certain sums of money including amongst others annual leave, overtime and days worked but not paid.
3. My drawing Mr. Odhiambo's attention prompted him to make an oral application, first seeking that the Respondent do make available to Court and to him employment records of the Grievants from October 2008 to October 2010 in respect of the 1st Grievant and from March 2008 to October 2010 in respect of the 2nd Grievant and secondly, seeking leave to call witnesses to adduce oral evidence.
4. Dr. Khaminwa opposed the application strongly on the basis that the Union had indicated before the start of the hearing that it would proceed on the basis of the pleadings and oral submissions and that it was not the duty of the Court to tell the parties how to conduct their cases.
5. This ruling relates to the application by the Union seeking production of employment records and leave to call oral evidence.
6. Article 159(2) (d) of the Constitution enjoins judicial bodies to administer justice without undue regard to procedural technicalities.
7. Similarly, section 20 of the Industrial Court Act, 2011 obligates the Court to act without undue regard to technicalities and further provides that the Court is not bound by the strict rules of evidence. The section also grants the court power to summon witnesses or to require any person to furnish it in writing with such information or documents as may be relevant.
8. Section 35 of the Labour Institutions Act allows a Labour Officer to inspect and examine the employment records of an employer while sections 10 and 74 of the Employment Act, 2007 obligate an employer to keep records of employment particulars and to allow an authorized officer to inspect such

records.

9. Were the Court to accede to the application by the Union to call oral evidence the Respondent will have the opportunity to cross examine them. The Respondent will not suffer any prejudice.

10. The Industrial Court is a specialist Court. Non lawyers have been permitted or granted active audience before it. These are trade union officials. Rule 6 of the Industrial Court (Procedure) Rules, 2010 envisages situations where trade union officials refer disputes to Court in accordance with the provisions of the Labour Relations Act. This is one such dispute.

11. The record of documents filed in Court show that the Respondent did not admit to the jurisdiction of the Conciliator appointed by the Minister because it argued that it did not have a recognition agreement with the Union and the Conciliator therefore recommended to the Union to approach the Court for redress.

12. Considering what I have discussed above and the statutory provisions referred to and mainly to enable me administer substantive justice to both parties the orders that commend to me are as follows:

- (i) The County Labour Officer to inspect and examine the employment records kept by the Respondent in respect of the 2 Grievants, Samwel Mwangi Gathu P006 and Kaimu Magaro Ndune P012 from March 2008 to October 2010 and make a report to the Court on the leave outstanding, overtime hours worked/paid, house allowance outstanding and any underpayments within the next 21 days.
- (ii) The County Labour Officer to share the report with the parties after filing a copy with the Court.
- (iii) The Union is allowed to call oral testimony and such witnesses shall be subject to cross-examination by the Respondent

13. The question of costs will be reserved until the final determination of the Cause.

14. As ordered by the Court on 21 February 2013 the Respondents Notice of Objection dated 21 September 2012 to the effect that the Court has no jurisdiction will be canvassed as part of the main Cause.

Dated, delivered and signed in open Court at Mombasa on this 23rd day of April 2013.

**Justice Radido Stephen
Judge**

Appearances

Mr. Odhiambo instructed by

Tailors & Textile Workers Union

for Claimant union

Dr. Khaminwa instructed by

Khaminwa & Khaminwa Advocates

for Respondent