



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 21 OF 2011

BETWEEN

JOHN AYIETA ONDIEK.....

.....CLAIMANT

VERSUS

COMMUNICATION WORKERS

UNION.....RESPONDENT

Rika J

CC. Leah Muthaka

Mr. Onyango for the Claimant

Mr. Maweu for the Respondent

RULING

The Claimant served the Respondent Trade Union for 17 years, as the Executive Officer. He also served as the Personal Assistant to the Respondent's General Secretary, Benson Okwaro.

He was retired in circumstances this Court declared to amount to unfair termination of employment.

The Court Awarded him a total of Kshs.486,000, on 8th April 2013. During the hearing, he testified that he appealed to Mr. Okwaro to reconsider the decision to send him on retirement. The appeal was rejected, occasioning the Claimant to suffer a stroke.

After the Award, the Respondent expressed its intention to appeal in the Court of Appeal, as it is entitled to under the Constitution and the Industrial Court Act No. 20 of 2011. It also filed an application for stay of execution of the Award pending appeal. The application is dated 7th May 2013 and supported by the affidavit of Mr. Okwaro sworn on 6th May 2013. The application is opposed. The Claimant relies on the affidavit of his Advocate Mr. J. L. Onyango, sworn on 17th May 2013.

The Claimant is reported to have suffered another stroke while these secondary proceedings are going on. This information has been relayed to the Court by Mr. Onyango. Although Mr. Maweu argues that this information is irrelevant, unsupported by evidence and not believable, the Court finds the information

relevant and believable. The evidence of failing health was initially given by the Claimant in his evidence. Mr. Onyango is an Officer of the Court, and would not seek the sympathy of this Court by presentation of false information.

The condition of Mr. Ondiek is relevant to this application. It highlights the adverse effects of long and unnecessary delays in settlement of employment disputes. It emphasizes why this Court has repeatedly held that in determining whether to grant stay of execution of Awards made in favour of employees, certain principles must outweigh all the other well-known principles. The principles that are placed on a high pedestal in this Institution of Social Justice are these:-

- The applicant must show special circumstances exist, meriting grant of stay of execution.
- Unless these circumstances are shown, what is granted to the employee must reach the employee promptly. Awards of the Industrial Court are meant to be fast, just and effective remedies.
- Section 17 of the Industrial Court Act No. 20 of 2011 does not grant a general right of appeal. Appeal must be shown to be based on *recondite* matters of Law.
- In an Award where the Claimant was granted Kshs.486,000, it falls upon the Applicant to show that if the money was paid, the right of appeal would dissipate, subject matter destroyed, and the Judgment by the Court of Appeal would be incapable of restoring the parties to the Status Quo.

The Respondent Trade Union has not demonstrated any special circumstances, warranting stay of execution.

The letters the Respondent complains were introduced after closure of the proceedings were known to both parties, and alluded to in evidence and pleadings, of the parties.

In Industrial Relations, dispute settlement is not limited by legal technicalities and rules of evidence. The negotiations, consultations, and conciliation processes preceding adjudication are relevant in considering final settlement. The Court is not prevented from looking at any out of Court proposals, and building on those proposals, in making its decision.

The Industrial Court is therefore granted a wide latitude, in managing its proceedings, and in determining which material can be considered in crafting out a fast, just and effective remedy. On 30th November 2013, this Court was alerted by Mr. Maweu about the letters attached to the Claimant's submissions. The Court, while appreciating that all pertinent issues should be raised at the hearing, undertook to examine the record and deliver an Award on notice.

This is what the Court did. The documents referred to, related to facts already alluded to by the parties elsewhere. These letters did not form the back-bone of the Award, but were part of what may be termed as peripheral indicia.

Mr. Okwaro is a leading Trade Unionist in this Country. The Court implores him to ease Mr. Ondiek's burden, recognize the long years Mr. Ondiek devoted to the Trade Union Movement, by implementing the Award of the Court, before the situation is past recall.

In sum:-

- (a) ***The application for stay of execution dated 7th May 2013, is rejected,***
- (b) ***The interim orders of stay are vacated and the Claimant placed at liberty to execute.***
- (c) ***No order on the costs.***

Dated and delivered at Nairobi this 9th day of July 2013

James Rika

Judge