



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 44/2013

(formerly Nairobi No. 1316/2011)

(Before Hon. Justice Hellen Wasilwa on 3rd July, 2013)

KENYA ENGINEERING WORKERS UNIONCLAIMANTS

VERSUS

ELDORET STEEL MILLS LTDRESPONDENT

JUDGMENT

The claimants Kenya Engineering Workers Union filed their memorandum of claims on 13.6.2013 seeking various orders. The claimants case relates to 81 employees of the respondent who the claimants aver were locked out of work after joining the union. 3 of these employees gave evidence before court. The claimants case is that the claimants and respondents have had long standing disputes involving recognition. A dispute was filed before court in 2008 over the issue of refusal to deduct union dues. The court ruled in favour of the claimants or ordered the respondents to deduct the said union dues and also sign a recognition agreement with the claimants. The CBA was finally signed on 2.12.2011 after court's intervention. CW1 Samuel Ogeto told court that he worked for the claimants since 1997 to 12th April, 2010. He was employed as a casual and was usually paid weekly. He informed court that on 12.4.2010, he had voted for the joining of the union in th period that the claimants and respondents had a problem of recognition. He was dismissed thereafter. He indicated that 81 of them were dismissed. He stated that he had worked for 14 years and upon dismissal was not paid any dues. He indicates that he was not given any notice nor allowed to defend himself. They sought help from their union which brought the case in court. He seeks to be paid his dues. In cross examination CW1 told court that he was a casual and used to be paid Kshs 265/= per day. He contends that there was no strike on 12.4.2010 and that he was not dismissed for lack of material. He says he had worked for over 3 months and was therefore not a casual.

CW2 told court that he worked for respondents from 1997 September upto 12.4.2010 when he was dismissed. According to CW2, he was dismissed because he had decided to join the union. He told court that he had worked for 12 years and used to be paid weekly.

CW3 gave similar evidence as CW1 & CW2. He had worked for respondents since 2002 to 2010. He told court that he used to be paid Ksh 300/= per day payable weekly. In cross examination he said it is not true that work had reduced. He seeks to be paid his dues.

The respondent on the other hand filed their reply to this claim on 9.12.2011 though the firm of Swale, Mwangi & Co. Advocates. They also called 2 witnesses who gave oral evidence in court.

In their response, the respondents contend that there is no recognition agreement between the parties

and therefore the claim has no legal basis and is therefore totally misconceived, bad in law and ill intended. They also deny locking out 81 workers as alleged. They aver that on the material date of the alleged lock out some workers staged a walk out for no apparent reason. That it later transpired that the said workers were looking for an avenue to unprocedurally terminate their services to the respondents while demanding other dues because they had secured employment in a newly opened steel mill in Kisumu.

After the walk out, the District Labour Officer intervened and all those who wished to leave were asked to do so. The respondent was asked to pay them whatever was due to them at that point and after due compliance the said workers left. The respondents aver that since these workers were casuals, the question of reinstatement as demanded by the claimants does not arise.

Having heard evidence from both parties, the issues for determination are:-

- 1. Whether there was a lock out of the 81 employees by the respondent.**
- 2. Whether the claimants are entitled to the remedies they have sought.**

On the first issue, evidence from the three witnesses who gave evidence shows that they were asked to leave the premises of respondents and locked out after they decided to join the claimant union. There is also evidence that there had been a long standing dispute between the claimants and the respondents involving recognition until the claimants filed suit. Industrial Cause No. 130/2008 wherein judgment was delivered by my learned brother Justice Rika on 19th August 2010 ordering the respondents to sign a recognition agreement with the claimants within 30 days of the delivery of the said judgment. The CBA was finally signed on 2.12.2011. The problem between the union and the respondent seem to have affected the employees who were finally locked out. From the evidence of RW2 – the labour officer, there was trouble at respondents factory on 12.4.2010 when employees grounded their tools police were even called in. A return to work formular was apparently signed though a copy was not shown to court. It is on this day the claimants insist they were locked out. The respondents aver that infact the workers went on strike and walked out for no apparent reason. The omission on the part of the respondents however relate to their refusal to involve the union in the stalemate given that at the time they were aware of the union existence and were also aware that the union was agitating for its recognition. The respondents were also aware that their workers had joined the union whether a CBA had been drawn or not. That being the position, it is apparent the respondents were not supportive of the union activities and this may have led to the industrial that excited. I find that indeed there was unrest which led to some workers either being locked out or staging a walk out. In either case, the claimants members are entitled to some payments of their dues.

The claimants called only 3 of the 81 alleged employees. There is no evidence that the 3 gave evidence on behalf of the 81 whom this court does not know. No list of the 81 was also provided. There was no affidavit sworn by any of the 3 that they had authority to give evidence on behalf of the respondents. In essence there is no proof that 81 workers were either locked out or staged a walk out. Their prayer to be reinstated cannot therefore be ordered in all the 81 workers.

However for the 3 who gave evidence, there is no contention that they worked for the respondents at one time. The lock out or walk out occurred in 2010 April. 3 years have since lapsed and therefore I cannot order a reinstatement. I will however order that each of the 3 employees who gave evidence in court be compensated as follows:-

1st Claimant Service pay since 1997 to 2010 = 13 yrs

= 15 days salary for each year worked

= ½ X 13 X 7950 = KSH 51,675

2nd Claimant also worked since 1997 = 13 yrs service pay.

$$= 7,950 \times 13 \times \frac{1}{2} = \text{KSH } 51,675$$

3rd Claimant worked from 2002 = 8 years

$$= 7,950 \times 8 \times \frac{1}{2} = \text{KSH } 31,800.$$

Each should also be issued with a certificate of service.

HELLEN WASILWA

JUDGE

3/07/2013

Appearances:-

Khayo for respondents present

Tom Owuor for claimants present

CC. Sammy Wamache.