



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 879 OF 2011

BETWEEN

TAILORS AND TEXTILES WORKERS UNION.....
..... CLAIMANT

VERSUS

BONAR [E.A.] LIMITED.....
..... RESPONDENT

Rika

J

CC. Leah

Muthaka

*Mr. Omondi Industrial Relations Officer instructed by the Claimant
Union*

*Mr. Kimondo holding brief for Mr. Gaita instructed by Gaita & Company Advocates for the
Respondent*

RULING

1. The Claimant Union initiated the proceedings herein through a Statement of Claim filed against the Respondent, on 7th January 2011. It is claimed that the Respondent refused to pay terminal benefits to its former employees, members of the Claimant Union, after the Respondent declared their positions redundant. The Claimant seeks to have all the employees paid their terminal benefits, in accordance with the terms of a CBA concluded between the Claimant and the Respondent.
2. The Respondent filed a Statement of Reply on 25th July 2011 denying the averments made by the Claimant. The Respondent's position is that, it was forced to close down operations through insolvency in 2006. It was not a case of redundancy, but insolvency. All employees were appraised of the situation. The Claimant similarly was aware the company closed down operations through insolvency.
3. The Respondent raised a preliminary objection based on this line of defence. The point was canvassed in Court on 4th April 2013.

The Court Finds and Orders-:

4. The issue raised by the Respondent in the objection cannot suitably be determined without hearing of the Parties. Whether the company closed operations through insolvency; whether employee's positions were declared redundant; and whether terminal benefits in either case were paid, are issues that call for hearing of the Parties. These are not matters that can be said to merit no further enquiry. There is need to establish the facts. Parties have gone through conciliation, and agreed to disagree. It would be irresponsible of the Court if it accepted the preliminary challenge as proposed by the Respondent. Such a decision would only ensure the Parties leave this Court in the same state they entered the Court; having agreed to disagree. Whether a business has collapsed, or been forced to diminish or phase out certain jobs due to financial meltdown, does not preclude the payment of employees' terminal dues. The Court must have the facts and examine those facts, before making any conclusion. IT IS ORDERED-:

[a] The Preliminary Objection is rejected.

[b] Parties to agree on a hearing date for the main dispute at the Registry.

[c] No order on the costs.

Dated and delivered at Nairobi this 18th day of September 2013

James Rika

Judge