IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT CAPE COAST IN THE CENTRAL REGION ON FRIDAY THE 17TH DAY OF FEBRUARY 2023 BEFORE HIS LORDSHIP JUSTICE BERNARD BENTIL - HIGH COURT JUDGE

SUIT NO.: E3/01/2022

1. AHMED ADAMS SEIDU

2. ABDUL LATIF

3. DANIEL ADONU & 97 ORS - PLAINTIFFS

VRS.

AMEEN SANGARI INDUSTRIES LTD - DEFENDANTS

JUDGMENT

FACTS

The Plaintiffs herein are former workers of the Defendant Company Ameen Sangari Industries Limited. As a result of the company's dwindling fortunes, it embarked on a redundancy exercises which affected the Plaintiffs. The company informed the Industrial and Commercial Workers Union (ICU). However, after series of meetings between the ICU and the Defendant on the redundancy packages to be given to the affected workers, there was a deadlock as to the quantum of severance pay, as no consensus could be reached. The matter was referred to the National Labour Commission (NLC) for resolution, who subsequently referred the parties to voluntary arbitration. The arbitration panel in its ruling settled on two (2) months' salary for

each completed year of service, pro rata. The Defendant has still not complied with the award of the voluntary arbitration and it is this situation that has necessitated this action.

The three main issues to be discussed are (1) whether or not the Defendant has paid other colleagues of the Plaintiffs (2) Whether or not the Defendant has failed to pay the Plaintiffs their entitlements and (3) whether or not the Plaintiff can execute the award by the Labour Commission.

Whether or not the Defendant has paid other colleagues is an issue which is a matter of fact, in paragraph 16 of the Plaintiff's witness statement, it was stated that fifty of the members gave up the fight and accepted the token of Two (2) weeks salary for each year of service the Defendant offered. In the submission by Ameen Sangari Industries Limited to the Arbitration Panel set up by the National Labour Commission, they also stated that several workers have contacted management individually and accepted the package offered to them.

Whether or not the Defendant has failed to pay the Plaintiffs their entitlements is also a matter of fact which will be answered with the discussion of the third issue.

A holistic perusal of the **Labour Act 2003 (Act 651)** indicates that part VIII mainly deals with redundancy. Section 65 of the Act is captioned Redundancy, pertinent to the issue at hand are clauses (1) (2) (3) and (5) it provide:

"*When an employer contemplates the introduction of major changes in production, programme, organisation, structure or technology of an undertaking that are likely to entail terminations of employment of workers in the undertaking the employer shall*

(a) Provide in writing to the Chief Labour Officer and the trade union concerned, not later than three months before the contemplated changes, all relevant information including

the reasons for any termination, the number and categories of workers likely to be affected and the period within which any termination is to be carried out; and

(b) Consult the trade union concerned on measures to be taken to avert or minimize the termination as well as measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

(2) Without prejudice to subsection (1), where an undertaking is closed down or undergoes an arrangement or amalgamation and the close down, arrangement or amalgamation causes

(a) severance of the legal relationship of worker and employer as it existed immediately before the close down, arrangement or amalgamation; and

(b) as a result of and in addition to the severance that worker becomes unemployed or suffers any diminution in the terms and conditions of the employment.

the worker is entitled to be paid by the undertaking at which that worker was immediately employed prior to the close down, arrangement or amalgamation, compensation, in this section referred to as "redundancy pay".

(4) The amount of redundancy pay and the terms and conditions of payment are matters which are subject to negotiation between the employer or a representative of the employer on the one hand and the worker or the trade union concerned on the other.

(5) Any dispute that concerns the redundancy pay and the terms and conditions of payment may be referred to the Commission by the aggrieved party for settlement, and the decision of the Commission shall subject to any other law be final."

It is patently evident from these provisions that where there are major changes in an organisation and the workers become redundant, the first thing the employer must do is to contact the labour union the workers belong to and engage them in consultations on measures to be taken by employer to reduce the impact of the proposed redundancy on the workers. Thus the labour union under the National Labour

Commission has a major role to play in the negotiation of redundancy packages for the affected workers.

It was stated in the case of **REPUBLIC v. HIGH COURT, ACCRA (INDUSTRIAL &LABOUR DIVISION COURT 2) EX PARTE; PETER SANGBER-DERY AND ADB BANK LTD** *CIVIL MOTION NO. J5/53/2017*

"Section 65 (5) assumes that all matters pertaining to a redundancy exercise are undisputed and if what remains to be resolved is the severance award then the Commission has jurisdiction. Put in another way, where the parties have negotiated the amount of severance pay and the terms of payment thereof but they are unable to agree on these matters and a dispute arises, it is that dispute that the Commission has power to resolve."

The Labour Act enjoins parties to an industrial dispute to negotiate in good faith with a view to settling the dispute in accordance with the dispute settlement procedures established in the collective bargaining agreement. The Labour Act 2003 (Act 651) and the National Labour Committee Regulations L. I 1822 both make reference to the procedure outlined in the collective bargaining agreement or contract of employment of a worker as the starting point in resolving industrial disputes. Where the parties that is the employer and the local union agree on the payment of monetary compensation which Section 65 (5) of Act 651 describes as "Redundancy Pay" then the matter is amicably resolved. However, when there is no agreement between the parties then Regulation 15 and 17 of L.I 1822 is activated to resolve the impasse,

Regulation (15) *"where there is no settlement at the end of the mediation process, the mediator shall immediately declare the dispute as unresolved and refer the dispute to the Commission within three working days for voluntary arbitration."*

Regulation (17) "Where a dispute is referred to the Commission under regulation 15, the Commission shall, with the consent of the parties, refer the dispute to an arbitrator or an arbitration panel for voluntary arbitration."

In the instant case, the Defendant Company duly informed the local union of the workers which is the Industrial and Commercial Workers Union (ICU) when it decided to embark on a redundancy exercise. The parties however could not come to an agreement on the redundancy payment after several meetings, and the matter was referred to an Arbitration panel in a letter numbered NLC/C -188/20/2021/04 dated 12th April 2021 under Regulation 17 of L.I 1822. The Arbitration Management Conference took place on the 4th of May 2021 and on the 29th of June 2021 in the arbitration award marked **Exhibit A**, the panel of arbitrators made the following award *"Two (2) months' salary for each completed year of service, pro rata*."

In a letter dated 19th of August 2021 and marked **EXHIBIT B** the ICU entreated the Defendant to urgently compute the Redundancy Pay for the workers based on the Arbitration Panel award. The Defendant in a letter dated the 16 September 2021 and marked **EXHIBIT C** duly made the computation of two (2) months salary redundancy pay for one hundred and thirty nine (139) workers and asked the ICU to go through and confirm whether everything was in order. Indeed, ICU in a reply to the Defendant in a letter dated 27th September 2021 and marked **EXHIBIT D** answered in the affirmative and requested that the Defendant effect payment to alleviate the hardships the members were going through. The matter began to unravel when in a letter dated October 5th 2021, and marked **EXHIBIT E,** The Industrial and Commercial Workers' Union rejected the payment plan put out by the Management of the Defendant as being against the directive from the National Labour Commission, bearing in mind that Regulation 30 of L.I 1822 provides;

"The award of the majority of the arbitrators in a compulsory arbitration shall be binding on the parties..."

Hence Defendants could not go against the award as it was binding on them and they had to make good on it. It is clear from the sequence of events that section 65 (5) of Act 651 and Regulation 15 and 17 of L.I 1822 have been adhered to and now left with the enforcement of the award.

Section 172 of the Labour Act 2003 provides for the enforcement powers of the NLC.

"Where any person fails or refuses to comply with a direction or on order issued by the Commission under this Act, the Commission shall make an application to the High Court for an order to compel the person to comply with the direction of the order."

A sin against a statute cannot be cured under cross-examination. It is as a result of which much emphasis is not dwelt on it in this judgment. The evidence given by the witness was porous and did not cure any defect in the Plaintiffs case.

The issue as to whether the Plaintiffs can execute the award by the Labour Commission is basically a question of capacity. It is patently obvious from section 172 of Act 651 that where a direction or an order is issued by the National Labour Commission requiring a person to do an act and they fail to do comply, the NLC is clothed with the authority to make an application to the High Court. There have been instances where the High Court has declined to enforce the orders of the NLC, In **National Labour Commission v. Ghana Telecommunication Ltd** Civil Appeal No. J4/53/2010 (unreported), the NLC went to the High Court to enforce an order against Ghana Telecommunications Limited. The High Court declined to do that because the order fell outside the scope of Section 133 of Act 651 which deals with unfair labour practice. In the instant case however, the issues arising falls within the purview of Section 65 of Act 651 and thus can be enforced by the High Court. The important question is can the individual workers make an application to the High Court for enforcement of the award of the arbitration panel?

The question of capacity in initiating any proceedings is fundamental and can have a disastrous effect on the outcome of a case. Hence, in the case of ***Republic v. High Court, Accra, Ex parte Aryeetey (Ankra Interested Party [2003-2004] SCGLR 398*** the Court held that *"Any challenge to capacity therefore puts the validity the validity of a writ in issue. It is a proposition familiar to all lawyers that the question of capacity, like a plea of limitation, it is not concerned with the merits so that if the axe falls, then a defendant who is lucky enough*

to have the advantage of unimpeachable defence of lack of capacity in his opponent is entitled to insist upon his rights."

The Defendant is challenging the capacity of the Plaintiffs and rightly so because it is clear as the Alpine stream that per Section 172 of Act 651, it is the National Labour Commission that is clothed with the authority to make an application to the High Court for an order to compel the Defendant to comply with the order or direction given by the Arbitration Panel. The Plaintiffs unfortunately have no locus standi as they were not parties in the Arbitration hearings, as it was between their union Industrial and Commercial Workers Union and Ameen Sangari Industries Limited. Even though the Plaintiffs are the beneficiaries of the arbitration award, they are still not parties to the agreement so they cannot compel the Defendants to comply, it can only be parties to the arbitration. The best thing for the Plaintiffs to have done was to commence this action jointly with the National Labour Commission and if the Court did not deem them necessary parties could have disjoined them. The Court is therefore unable to agree with the Plaintiffs to make an order to compel the Defendants to comply with the award.

It is my considered opinion that the workers ought to have compelled the National Labour Commission by suing them to force them to make an application to the High Court for an order to compel the Defendants to comply with the award of the Arbitration Panel set up by the National Labour Commission. Cost of GH¢2000.00 is awarded against the Plaintiff's Counsel for commencing this action when Section 172 of the Labour Act 2003 (Act 651) clearly provides for the enforcement powers of the National Labour Commission.

JUDGEMENT

CASE DISMISSED.

(SGD)

BERNARD BENTIL J.

[HIGH COURT JUDGE]

COUNSEL:

GORDON C. AKPADZIE ESQ. FOR THE PLAINTIFFS.

E. K. AMUA-SEKYI ESQ. FOR THE DEFENDANTS.