



Tailors and Textiles Workers Union v Vajas Manufacturers Limited (Cause E6458 of 2020) [2024] KEELRC 621 (KLR) (14 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 621 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6458 OF 2020
L NDOLO, J
MARCH 14, 2024**

**BETWEEN
TAILORS AND TEXTILES WORKERS UNION CLAIMANT
AND
VAJAS MANUFACTURERS LIMITED RESPONDENT**

JUDGMENT

1. By a Memorandum of Claim dated November 15, 2020, the Claimant Union accuses the Respondent of violation and discrimination in implementation of the parties' Collective Bargaining Agreement (CBA) with respect to nine drivers, who are members of the Union, by declining to pay them:
 - a. House allowance in accordance with Clause 4 of the CBA;
 - b. Travelling allowance in accordance with Clause 18 of the CBA;
 - c. Adjusted wages as from March 1, 2019 in accordance with Clause 33 of the CBA.
2. The Respondent filed a Memorandum of Response dated June 19, 2023.
3. By consent of the parties, the matter was dispensed with by way of pleadings and written submissions.

The Claimant's Case

4. The Claimant states that the following members working for the Respondent as drivers, have been denied their rightful dues:
 - a. Jackson Nzuki Muthiani
 - b. Pius Mutuku Kilonzo
 - c. Kepha Obadha Otieno



- d. Joseph Bulimo
 - e. Patrick Mbula Mwandikwa
 - f. Nicholas Mutisya Mutunga
 - g. Fredrick Owino
 - h. Kanyango Simon Chege
 - i. Joseph K. Nzau
5. The Claimant avers that the named drivers joined the Union in March 2019, upon which the Respondent commenced deduction and remittance of union dues on their behalf.
 6. The Claimant accuses the Respondent of discriminating against the nine drivers by paying them less than their other colleagues.
 7. The Claimant further accuses the Respondent of failing to attend conciliation meetings convened by the Conciliator.
 8. The Claimant claims the following on behalf of the named drivers:
 - a. House allowance from March 2019 to date, in accordance with Clause 4 of the CBA;
 - b. Leave travelling allowance from March 2019 to date, as laid down in Clause 18 of the CBA;
 - c. Adjusted wages (by 6%) effective March 2019 to date, in compliance with Clause 33 of the CBA;
 - d. Accrued arrears with interest at 19% per annum;
 - e. Costs plus interest

The Respondent's Case

9. In its Memorandum of Response dated June 19, 2023, the Respondent states that the CBA in contention being the one covering the period 2018 to 2020 does not provide for drivers as a category of covered employees.
10. The Respondent referred the Court to Part II of the subject CBA which provides for the categories of employees covered by the CBA as follows:
 - a. Unskilled Labourer;
 - b. Machine Assistant;
 - c. Machine Attendant;
 - d. Ungraded Artisan;
 - e. General Clerks.
11. The Respondent adds that this omission had been noted and it was agreed between the parties that the category of drivers be included in the next CBA cycle, which had since been effected in the successive CBA.



12. The Respondent avers that two of the drivers on whose behalf the claim has been brought namely; Jackson Nzuki Muthiani and Pius Mutuku Kilonzo had since left employment. Upon being paid their terminal dues, the two discharged the Respondent from any further claims.
13. Regarding the specific claims on house allowance, leave travelling allowance and salary arrears, the Respondent submits that the named employees were paid in accordance with the law and their individual documents of engagement.

Determination

14. This dispute proceeds from applicability of the CBA negotiated by the parties to cover the period 2018-2020. The Union complains that the category of drivers was locked out of the CBA in a discriminatory manner.
15. On its part, the Respondent states that the parties freely negotiated the CBA to cover specific categories of unionisable employees.
16. Part II of the subject CBA provides for the following categories of employees covered by the CBA:
 - a. Unskilled Labourer;
 - b. Machine Assistant;
 - c. Machine Attendant;
 - d. Ungraded Artisan;
 - e. General Clerks.
17. By definition, a CBA is a binding agreement negotiated by a trade union on behalf of its members, and an employer in the relevant sector. The Court did not see any evidence of coercion on any of the parties nor was there a dispute regarding the CBA itself. What the Union now wants the Court to do is to rewrite the CBA long after the expiry of the covered period.
18. In its written submissions dated January 30, 2024, the Respondent referred to the decision in *Kenya Union of Domestic, Hotels, Educational Institutions and Hospitals Workers v Tenwek Hospital Board of Management* [2020] eKLR where it was held that a CBA is a binding agreement, which can only be set aside on established grounds of fraud, forgery or misrepresentation.
19. The Claimant did not adduce any evidence of fraud, forgery or misrepresentation and the Court therefore has no basis to interfere with the CBA, which is already retired. Whatever the reason for leaving out drivers from the categories of covered employees, the omission could only be addressed in negotiations for future CBAs, which the Respondent states, has been done.
20. In the result, the Claimant's entire claim is without merit and is disallowed with each party bearing their own costs.
21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF MARCH 2024

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JUDGE

Appearance:



Mr. Omondi for the Claimant

Mr. Okeche for the Respondent

