



**Kenya Union of Journalists v Standard Group (Cause 171 of 2020)
[2024] KEELRC 1347 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1347 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 171 OF 2020
NZIOKI WA MAKAU, J
JUNE 6, 2024**

**BETWEEN
KENYA UNION OF JOURNALISTS CLAIMANT
AND
THE STANDARD GROUP RESPONDENT**

JUDGMENT

1. Through a Statement of Claim dated 14th April 2020, the Claimant Union instituted this suit against the Respondent claiming unlawful reduction of wages and salaries of its unionisable members and demanding immediate refund of the same. The Claimant’s case is that on 7th April 2020, the Respondent issued a Memo of the same date addressed to all its staff, including the Claimant’s unionisable members, communicating its decision to effect pay cut on all employees’ wages and salaries by a margin of 25% for those earning Kshs. 100,000/- and 20% for those earning below Kshs. 100,000/-. That without considering consultation, the Respondent subsequently sent the Union a letter on 9th April 2020 confirming the aforementioned matters. The Claimant argued that such reduction of salaries occasions untold hardship and inconvenience to the employees’ wellbeing, and is unlawful and untenable in a democratic society based on the rule of law.
2. The Claimant Union asserted that it and the Respondent are parties to a Recognition Agreement of 18th February 1972 and have subsequently executed numerous CBAs, with the recent being the 2018-2020 CBA submitted for registration on 4th November 2019. The Union argues that under the terms of the Recognition Agreement, the CBA and the law, the Respondent is under a strict duty to consult with the Claimant Union on matters pertaining terms, conditions and welfare of the unionisable members. That the Respondent is also enjoined under Article 41(1) and (2)(a) and (b) of the Constitution to observe, respect and promote the rights of the said unionisable members to fair labour practices, fair remuneration and reasonable working conditions.



3. In response, the Respondent filed a Statement of Response dated 26th October 2020 averring that following the announcement of the first case of Covid-19 Pandemic in Kenya, the Nairobi Securities Exchange (NSE) halted trading on Friday 13th March 2020 and sent out a notice on the same. That the Respondent being a public listed company in the NSE, was grossly affected by the halt in trading, which impacted the value of its shares. The Respondent fronted that the Pandemic greatly affected its business financially and consequently, its Board of Directors approved a 50% pay cut on all non-executive directors' allowances and fees/honoraria effective the first quarter of 2020 and payment of the same to be deferred for six (6) months. The Respondent's case is that it had demonstrated that it is a victim of force majeure events constraining its ability to meet its contractual obligations and that it indeed issued the said Memo as pleaded by the Claimant. It argued that the present suit is a trade dispute within the meaning of the *Labour Relations Act, 2007* and that the Claimant Union should therefore have first reported the same to the Minister for resolution according to Part VIII of the said *Act*. That Article 159 of the *Constitution* of Kenya directs Courts to encourage alternative means of dispute resolution and that the Claimant should first exhaust the dispute mechanism provided in Statute before coming to this Court. The Respondent's stance was that considering the myriad of challenges it is facing, it made the necessary decisions to ensure it remains a going concern and maintains an employment relationship with its employees. It thus prayed that the present claim be dismissed with costs to the Respondent.
4. In evidence, the Claimant's Witness, Mr. Eric Oduor, stated under cross-examination that an agreement was signed with the Claimant Union before the pay cut and that they did not sue because of this pre-signed agreement. He relied on the 2018-2020 CBA in asserting that there was a strict duty to negotiate terms and conditions of service between the employer and members of the Union. On the other hand, the Respondent's Witness, Ms. Carol Achieng' Muga confirmed under cross-examination that there was no prior agreement with the Claimant Union.
5. No submissions had been filed as at Monday 3rd June 2024 when proof reading of the judgment was made.
6. The parties have been in congress for a very long time. By the reckoning of time by this Court it is well over 52 years from the first interaction between them in 1972. As such, a lot of history exists between the parties. In the case before me, a pay cut was effected in April 2020. At the time, the novel corona virus known as Sars-Covid 19 was making its presence felt all around the world. As all can recall, it brought the world to a near halt. There was suspension of air travel, public meetings and gatherings were banned, people had to have masks, use various protocols to ensure safety of the populace. We lost many souls to the disease. The impacts were felt in business concerns affecting employers and employees alike. The Claimant Union has members in the Respondent and they were acutely affected by not just the pay cut but some employees even lost their livelihoods. The Respondent mitigated the effects of the Covid 19 pandemic by ensuring the members of the Claimant were notified of the pay cut. While no consultation seems to have taken place, the Court takes judicial notice of the extraordinary circumstances prevailing at the time. The Covid 19 measures were temporary in their nature in my view and as of this time it would be expected that normalcy, or a semblance thereof has been achieved. The Court was not apprised of the next CBA cycle and what that portends to the Claimant's members. Is the position where it was expected to be in the current cycle? It would be unconscionable to expect the Respondent to make good the loss suffered by its employees over the Covid period. It was a sad and sorry situation that no one could have predicted and one the Respondent could not have prevented. The Court cannot equally place any blame on the Claimant for making the effort to have its members obtain some modicum of restitution. In my considered view, having made it through that tough season, it is hoped the Respondent and Claimant will find common ground going forward to renew their



relationship and amity for the common good of the staff and the enterprise. The suit having been an exceptional one, is one where the Court will not grant any costs despite an order dismissing the suit.

It is so ordered.

Dated and delivered at Nairobi this 6th day of June 2024

Nzioki wa Makau

JUDGE

