



Kenya Union of Commercial Food and Allied Workers v Kangunu Farmers Cooperative Union Limited (Cause E034 of 2022) [2023] KEELRC 2650 (KLR) (27 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2650 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E034 OF 2022
ON MAKAU, J
OCTOBER 27, 2023**

BETWEEN

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS CLAIMANT**

AND

KANGUNU FARMERS COOPERATIVE UNION LIMITED RESPONDENT

JUDGMENT

1. The claimant is a registered trade union while the respondent is a cooperative society whose core business is selling and marketing of coffee from farmers within Murang'a county. The two parties have a Recognition Agreement and together they concluded and registered Collective Bargaining Agreements (CBAs). They were in the process of negotiating their CBA for 2016-2018 and 2018-2020 cycle when they disagreed on the general wage increment. The claimant was demanding 8% increment each year for the four years while the respondent contended that the parties had met on 22nd November 2019 and signed a CBA settling at 5% wage increment per year.
2. The dispute was referred to the Labour officer Murang'a for conciliation but the said issues were not resolved hence this suit. After close of pleadings, the matter was referred to the Central Planning and Monitoring Department (CPMD) in the Ministry of Labour for preparation of an Economic Report to assist the court in determining the dispute.
3. The Report was prepared by Mr. Bob Ngache on behalf of the Director of the CPMD on 15th May, 2023. The report evaluated the financial position of the respondent and proposed salary increment for the two CBA cycles. An increment of 6.5% per year was recommended totaling to 13% for the 2016-2018 CBA cycle. In the 2018-2020 CBA cycle, an increment of 6.25 per year was recommended totaling to 12.5% for the two years.



4. Each party was served with the report and the court directed them to file written submissions to dispose of the matter. However, only the claimant complied with the court's directions.

Claimants' submission

5. The claimant submitted that during the meeting held on 22nd November, 2019, the respondent offered 2% per year which was rejected by the union and as such no CBA was signed. It submitted that the employees have suffered for over five years without any salary increment. It contended that there is a big wage gap between the management's salaries and the unionsable staff. It urged the court to grant a wage increment at the rate of 8% per year for the four years contending that the CPMD report has confirmed that the respondent is financially able to afford.

Analysis and Determination

6. Having considered the pleadings, evidence, submissions and the Report by the CPMD, the following issues arise for determination:-
 - a. Whether the claimant's members are entitled to general wage increment.
 - b. Whether the employer has the financial capacity to pay the proposed increments.
 - c. Whether the claimant is entitled to any relief.

Wage increment

7. The claimant contends that a wage increment of 8% per year for four years of the two CBA cycles 2016-2018 and 2018-2020 respectively. The employer pleaded that an increment of 5% per year was agreed between the parties on 22nd November 2019. None of the parties agree with the recommendation by the CPMD of 6.5% per year for the 2016-2018 and 6.25% per year for 2018-2020 cycle.
8. Disputes on wage increment has been in our courts severally and the emerging jurisprudence is that wage increment is dependent on productivity, rise in cost of living (inflation) and the employer's ability to pay. In the case of Kenya Tea Growers Association v Kenya Plantation & Agricultural Workers Union (2018) eKLR, the Court of Appeal held that:-

“Consequently, a court faced with a question of wage increment ought to take into account productivity, cost of living and the ability to pay by the employer.”

Rise in cost of living

9. The CPMD filed the aforesaid economic Report to guide the court in determining the correct wage increment. On the issue of Cost of Living (inflation), the report indicated that the claimant's members fall under the New Kenya CPI Group because the respondent is domiciled in Kangema Sub-County of Murang'a County. CPI is the abbreviation for Consumer Price Index. The report set out the CPI for the said group as follows:

CPI as at October 2014 = 151.92

CPI as at September 2016 = 171.56

CPI as at October 2016 = 172.62

CPI as at September 2018 = 194.14



10. The report worked the compensation from the said inflation as follows:

Compensation in 1st CBA = $171.56-151.92/151.92 \times 100\% = 12.9\%$

Compensation in 2nd CBA = $194.14-172.62/172.62 \times 100\% = 12.5\%$

11. By dividing each set by two, the report gave the rise in the cost of living (inflation) as 6.5% per year for the first CBA, and 6.25% per year for the second CBA. The report also indicated that an increase of wages by the 6.5 % per year will mean an additional Kshs.500,000 to the wage burden and Kshs 1Million for the two years. The report further indicates that, during the second CBA, a wage increment of 6.25% will mean an additional Kshs530,000 and Kshs1.03 Million for the two years. The said increments would then increase the respondent's wage bill to Kshs. 8 million during the first CBA and Kshs. 9.03 in the second CBA cycle which is affordable.

Productivity

12. Productivity refers to the wealth generated by labour to the employer. Wage Guideline No.2 requires that productivity should form the major part of compensation considerations as workers helped in creating the wealth during the period under review. I have noted from Table 2 in the CPMD report that the respondent's financial position has been on the rise that in 2020 and 2022.

13. The table also indicates that the respondent had a deficit of Kshs.4 million in 2020, Kshs 2.4 million in 2021 and Kshs. 17.3 million in 2022. However, it was clarified that the deficit was due to high percentage used to pay the members of the respondent. In 2021, the members were paid 78% compared to 94% in 2022. This was so despite the fact that the income increased from Kshs. 107,882,111 in 2020 to Kshs.235,889,652 in 2021 and 319,319,509 in 2022. Thus, income increased by 116% in 2021 and 35% in 2022.

14. The above analysis shows that the respondent is doing very well in productivity. As such I find and hold that the workers are entitled to a share of the wealth they have helped the employer to create.

Wage differential

15. Wage differential which considers the difference between the lowest paid management staff and the highest paid unionisable staff. In this case the highest paid unionisable employee earns Kshs.53,000, while the lowest management cadre earns Kshs.30,000. Consequently, the CPMD found that there was no disparity in wages within the organization.

16. Having put all the above factors into consideration, I am clear in my mind that the claimant's members have since 2016 lost buying power due to inflation (rise in the cost of living). I am also satisfied by the information given by the CPMD report that the respondent's productivity has been on the rise. Further, I am satisfied that the respondent can afford to pay the claimant's members a pay increment of 6.5% per year and 6.25% per year in the two CBA cycles to cushion them from the rise in the cost of living. The respondent is making hundreds of millions per year using the workers' seat and therefore the said increment will only add to the respondent's wage bill by a paltry Kshs.2.06 million during the four years under consideration.

Conclusion

17. Based on the foregoing analysis, I enter judgment in favour of the claimant in the following terms:-

- a. The claimant's members are awarded general wage increment of 6.5% each year for the 2016-2018 CBA.



- b. The claimant's members are awarded general wage increment of 6.25% each year for the 2018-2020 CBA.
- c. The parties are directed to conclude the CBA within 30 days of today.
- d. In order to encourage good relationship between the two social partners, I direct that each party meets its own costs of the suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 27TH DAY OF OCTOBER 2023.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

