



Pwani University Council v Universities Academic Staff Union; Ministry of Labour and Social Protection & another (Interested Parties) (CBA E082 of 2023) [2023] KEELRC 2637 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2637 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CBA E082 OF 2023
L NDOLO, J
OCTOBER 26, 2023

BETWEEN

PWANI UNIVERSITY COUNCIL EMPLOYER

AND

UNIVERSITIES ACADEMIC STAFF UNION UNION

AND

MINISTRY OF LABOUR AND SOCIAL PROTECTION .. INTERESTED PARTY

ATTORNEY GENERAL INTERESTED PARTY

RULING

1. When the Collective Bargaining Agreement (CBA) that is the subject of this ruling came up for registration, an objection was raised on behalf of the Employer. I therefore directed the parties to file submissions on the objection.
2. In its submissions dated 30th August 2023, the Employer makes reference to Malindi ELRC Petition No E004 of 2023, seeking orders to suspend retirement notices issued to several members of the Union based on the CBA dated 12th July 2017.
3. It is submitted that on receipt of the Petition, the Employer realised that Clause 11(a) of the CBA is contrary to public policy and guidelines in that it provides that:
 - a. The mandatory retirement age for academic staff shall be seventy five (75) years, but an employee may opt for voluntary/early retirement at fifty five (55) years.



4. According to the Employer, government policy provides for retirement of universities academic staff at seventy (70) years. The Employer therefore submits that the CBA ought to be reviewed to bring it in line with government policy.
5. The Employer relies on the decision in CBA Nos 1, 2 & 3 of 2020: *Inter Public Universities Council Consultative Forum v Kenya Union of Domestic, Hotels, Education Institutions and Hospital Workers (KUDHEIHA), Universities Academic Staff Union (UASU) & Kenya Universities Staff Union (KUSU)* where it was held that:

“The current practice as set out in the pension schemes for universities, the policies and guidelines in place and the provisions of any law that governs retirement age in the public sector shall apply.”
6. The Employer states that Clause 11(a) of the subject CBA, which provides for a retirement age of 75 years is contrary to the normal retirement age provided in the Pwani University College Staff Retirement Benefits Scheme Trust Deed.
7. In its submissions, the Union sought to make a distinction between Malindi ELRC Petition No E004 of 2023 and the subject CBA. However, a reading of the pleadings in the Petition reveals that the substance of the dispute has to do with the retirement age of members of the Union. Registration of the CBA would therefore have a direct bearing on the outcome of the Petition.
8. The Union further submits that because there has been no objection by either the Salaries and Remuneration Commission or the Ministry of Labour, the CBA ought to be registered. My view on this is that the Employer and the Union are the primary parties to the CBA and the Court must consider an objection by either of them, whether or not the supervisory bodies have raised an issue.
9. The objection by the Employer is premised on an alleged violation of public policy on retirement age in the public sector. I am of the view that this is a substantive matter that warrants remission of the CBA to the parties for re-negotiation.
10. The parties are therefore directed to re-negotiate Clause 11(a) of the CBA and report back to this Court within the next forty five (45) days.
11. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF OCTOBER 2023

LINNET NDOLO

JUDGE

