



REPUBLIC OF KENYA



Kenya Post Office Savings Bank v Banking Insurance and Finance Union (Employment and Labour Relations Cause E822 of 2021) [2023] KEELRC 3325 (KLR) (21 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3325 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E822 OF 2021
AN MWAURE, J
DECEMBER 21, 2023**

BETWEEN

KENYA POST OFFICE SAVINGS BANK CLAIMANT

AND

BANKING INSURANCE AND FINANCE UNION RESPONDENT

RULING

1. The honourable court delivered a Judgment on 16th June 2023 and made the following orders for upward revision of the following: -
 1. Salary and wages
 2. Housing allowance
 3. Owner occupier allowance
 4. Subsistence allowance
 5. Annual leave allowance
 6. Medical (outpatient)
 7. Car allowance
 8. Commuter allowance
 9. Hardship allowance
 10. Sundry (Extraneous) allowance)
2. The awards were to be based on the contents of the revised collective bargaining agreement, which has not been provided to court to-date.



3. The court has engaged the parties on several occasions since then to present the revised collective bargaining agreement to assist the court to finalise the award.
4. The court also sought assistance from the commissioner of labour by this court's letter dated 14th November, 2023. The Commissioner for Labour by their letter dated 5th December 2023 also too asked for guidance on the finalised revised collective bargaining agreement and so did not give any direction.
5. Finally, the court also looped in the Salaries and Remuneration Commission (SRC) for guidance. SRC wrote a comprehensive report dated 30th November 2023 and said the current situation of the respondent is neither sustainable nor affordable. They said that it is possible the customer deposits are being used to finance operating expenses. They concluded that the situation raised concerns on the going concern of the entity and would not recommend upward revision.
6. The SRC indeed concluded that that the respondent's position reflects unfavourable position to finance and fiscally sustain the proposed review. They recommended that the Bank to negotiate the CBA with a view to retaining all items with financial implications.
7. The court considered very consciously the claimant's submissions and proposed revisions dated 26th December 2022.
8. The court notes the SRC view that if the salaries and allowances of the Respondent's employees are raised the bank will halt to a grid. In that case there is no value to increase salaries and allowances and then the organisation closes down to the detriment of all the employees.
9. Nevertheless, because the court made an order on increment of its dues the court will grant only nominal revision on some of the items and the same will start to be implemented after July 2024. The same will be revised as follows:
 1. Salaries and wages 0.5% effective 1/7/2024.
 2. Housing allowance 0.2% from 1/7/2024.
 3. Owner occupier 0.2% from 1/7/2024.
 4. Subsistence allowance not to be revised.
 5. Annual leave allowance to be retained as it is.
 6. Medical (outpatient). The same to be retained and respondent to source for a medical cover of same amount.
 7. Car allowance – To be retained to save the bank from total collapse.
 8. Commuter allowance to be retained for the reason that the bank is at a risk of closing down.
 9. Hardship allowance to also remain for now.
 10. Sundry allowance to be revised by 0.2% from 1st July 2024.
 11. The respective parties are however advised to revise their CBA in the next two years hoping the fortunes of the bank will have improved.
10. This is a case where it is reasonable for each party to meet its costs.
11. Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 21ST DAY OF DECEMBER, 2023.

.....

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

