



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1608 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

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

VERSUS

KENYA MEAT COMMISSION.....RESPONDENT

RULING

1. Judgment in this suit was delivered on 5th June 2020 as follows: -

“It is for these reasons that I find the outcome of the disciplinary process unlawful and declare the same null and void.

I am however cognisant of the fact that the cause of the whole situation was the financial circumstances of the respondent. To burden it by reinstatement of the employees would only compound the situation.

In view of the forgoing, I will order that each of the 68 grievants be deemed to have been terminated normally and be paid all terminal dues according to the parties CBA.

In addition, I order that each of the grievants be paid compensation equivalent to 10 months’ consolidated salary. Any arrears of salary should also be paid together with salary withheld during the disciplinary process if any. Should parties disagree on computation, each party shall tabulate and file its tabulation in court.

2. The Court had earlier on 14th December 2018 delivered a ruling on the Claimant’s notice of motion seeking conservatory orders when the Court ordered that –

i. Spent.

ii. THAT application fixed for inter partes hearing on 24th January, 2019

iii. THAT in the interim status quo be maintained pending further orders of the court.

[Emphasis added]

3. On 21st July, 2020 the claimant filed and served tabulation of benefits which included:-

i. Long service as per clause 9.4 of the parties CBA.

ii. Leave and leave allowance

iii. Withheld half (½) salary

iv. Arrears of salary increments and increase on housing allowance awarded to other employees during the pendency of the court matter

v. Gratuity based on 60 days' pay for each year worked; and

vi. Compensation

All totalling to Kshs.72,235,605.40.

4. The Respondent on their part, tabulated benefits amounting to Kshs.35,746,981.16 all-inclusive based on the following benefits:-

i. Gratuity - based on 45 days' pay for each year worked.

ii. Notice pay

iii. Long service

iv. Accrued leave

v. Withheld half (½) salary

vi. Compensation

5. Parties thereafter held consultative meetings and were able to agree on:

i. Notice pay

ii. Long service

iii. Accrued leave

iv. Withheld half (½) salary

v. Compensation

6. The parties were, however, unable to agree on the following components of benefits: -

i. Effective of the termination

ii. Salary increments and other allowances awarded to Respondent's employees from 2019 to date

iii. The basis of computing gratuity

7. Following the disagreement of the parties on the tabulation of the terminal benefits as per Court award, the Court directed parties to file submissions justifying their various positions. The Claimant filed its submissions dated 27th July 2021. The Respondent filed submissions dated 2nd December 2021 and filed on 10th December 2021.

8. The Court has considered the submissions of the parties in light of the judgment on each of the items that were not agreed upon set out below –

i. The effective date of termination

9. The Claimant submits that the effective date of termination should be the date of judgment while the Respondent's position is that the effective date is 27th November 2018, the day the impugned disciplinary process was commenced.

10. In view of the fact that the Respondent paid salaries up to May 2020, and in view of the interim orders made in the ruling of 14th December 2018 which has been reproduced at paragraph 2 above, the effective date of termination is the date of judgment being 5th June 2020.

ii. Salary increments and other allowances

11. The grievants having been in employment until the date of termination, are entitled to all increments awarded to serving employees until the date of termination.

iii. Basis for computing gratuity

12. Gratuity is to be paid at 45 days for each year of service as per CBA. The Claimant's argument that the same be based on the agreement of the parties during negotiations is not valid as Section 59(5) of the Labour Relations Act provides that terms negotiated in a CBA become payable on the date of registration of the CBA.

Conclusion

13. The parties are directed to finalise the tabulation of the CBA based on these guidelines and submit the same to Court within 14 days.

14. The suit herein shall be mentioned on **16th February 2022** for confirmation and adoption of the tabulation.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF JANUARY, 2022

MAUREEN ONYANGO

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 Civil 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.

MAUREEN ONYANGO

JUDGE