



**Kenya Airports Authority v Kenya Aviation Workers Union (KAWU)  
(Cause E259 of 2022) [2022] KEELRC 4023 (KLR) (6 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4023 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E259 OF 2022**

**M MBARÚ, J**

**JUNE 6, 2022**

**BETWEEN**

**KENYA AIRPORTS AUTHORITY ..... CLAIMANT**

**AND**

**KENYA AVIATION WORKERS UNION (KAWU ..... RESPONDENT**

**RULING**

- 1 The claimant filed application dated 28<sup>th</sup> April, 2022 under the provisions of Section 3 and 12 of the *Employment and Labour Relations Court Act*, and Rule 17 of the *Employment and Labour Relations Court (Procedure) rules*, 2016 and seeking for orders that;
1. Spent.
  2. Spent.
  3. A temporary injunction be issued restraining the respondent, its officials, members, agents and or employee from engaging in, participating and/or continuing with any strike whatsoever in relation to the strike notice dated 26<sup>th</sup> April, 2022 and/or to the claim herein against the applicant pending the hearing and determination of this claim;
  4. A prohibitory injunction be issued prohibiting and/or restraining the respondent, its officials, members, agents and/or employees from engaging in, participating and/or continuing with the strike threatened vide respondent's notice issued and/or dated 26<sup>th</sup> April, 2022 ending the hearing and determination of this suit.
  5. Spent.
  6. This court do issue orders suspending the strike notice dated 26<sup>th</sup> April, 2022 as issued by the respondent herein pending the hearing and determination of this suit.



7. Costs of this application be provided for.
2. The application is supported by the Affidavit of Margaret Munene and on the grounds that the respondent has issued a strike notice dated 26<sup>th</sup> April, 2022 on the grounds that it is necessitated by the claimant's failure to conclude and implement the 2016-2019 Collective Bargaining Agreement (CBA) which was negotiated and agreed with the union in 2019. The claimant has a Recognition Agreement with the respondent which recognises the respondent as the sole body bestowed with the responsibility of negotiating for terms and conditions for unionisable staff of the claimant.
3. The Board of the claimant in its meeting held on 30<sup>th</sup> January, 2020 approved an annual increment for the years 2016 at 6%, 2017 at 6%, 2018 at 6%, 2019 at 6% translating to a total cost of Ksh.231.3 million and further granted the management team approval to interact with the respondent as guided by the Salaries and Remuneration Commission (SRC) with a view of finalising negotiations and subsequent negotiations of the CBA.
4. Parties have negotiated CBA but the conclusion and implementation of the same has been frustrated by an Act of God upon which any contract or agreement may be rendered unenforceable. Contrary to the strike notice, the respondent has failed to execute and conclude the negotiations on the new CBA for the year 2016-2019 while the claimant is ready to execute the CBA according to the terms stipulated therein and it was the respondent who declared a dispute and referred the matter to a conciliator.
5. In meeting between the claimant and the respondent with the conciliator on 22<sup>nd</sup> April, 2022 the outstanding issues in the CBA of 2016-2019 were resolved being:
  - a. Dispute – the issue was resolved;
  - b. Amendment – the 2014/2015 CBA be retained with the additional issue of salary adjustment and the other issues be addressed in subsequent CBA negotiations;
  - c. Agency fees – this be expunged from the CBA and be handled administratively as per the Order of the Minister;
  - d. House allowance arrears – this be captured in the MOU and be handled administratively after the signing of the CBA or in the next negotiations cycle;
  - e. MOU – both parties have an MOU on the payment modalities and the same be removed from the CBA; and
  - f. Signing of the CBA – a deadline of both parties to sign the document by 25<sup>th</sup> April, 2022.
6. Other grounds in support of the application are that, contrary to the recommendations by the conciliator and prior to the implementation thereof, the respondent issued a strike notice showing bad faith towards the implementation of the negotiated terms. All the terms of the CBA 2016-2019 except house allowance had been agreed upon. The conciliator directed parties to execute the CBA and the outstanding issue of house allowance be captured in the MOU and addressed administratively or in the next cycle hence it should not be an impediment to execution of the CBA as suggested by the conduct of the respondent and the strike notice.
7. Ms Munene in her affidavit in support of the application avers that she is the acting Corporation Secretary of the claimant with authority to support the application before court. The claimant is a State Corporation with the mandate for construct, operate and maintain aerodromes and provide other amenities and facilities for passenger and other persons making use of the services or other facilities provided within the country.



8. Jomo Kenyatta International Airport (JKIA) recently achieved the Last Point of Departure status enabling it to become one of the elite African airports to be certified as point of departure to the United States of America and therefore positioning the JKIA to become the premier hub in Africa and the threatened strike seeks to reverse the gains made and has the effect of crippling the economy. The claimant and respondent members enjoy an employer and employee relationship and the employees are responsible.
9. The claimant and the respondent are engaged in essential service and strike notice of 26<sup>th</sup> April, 2022 is bad in law, illegal and in bad faith and in violation of Section 78(1) (f) of the *Labour Relations Act, 2007* (LRA) considering the JKIA and all other airports in Kenya are sensitive national security installations and the threatened strike is a threat to national security warranting this court to intervene to averts disaster associated with the aviation industry.
10. The strike is orchestrated and designed to inconvenience members of the public, both local and international using the JKIA without regard to the irreparable losses likely to be suffered and the security threat posed by such strike to efficient operations of airports. Whereas the parties may have executed the CBA the conclusion and implementation has been frustrated by an Act of God which is a ground upon which any contract or agreement may be rendered unenforceable. In March, 2020 the World Health Organisation declared COVID-19 a global pandemic with dire predictions on populations and health systems and as a result countries imposed stringent measures to limit the spread. The government issued travel restrictions that resulted in closure of air transport, closure of schools and restriction of movement. Foreign countries issued travel restrictions to Kenya and which crippled the aviation industry. It is over two years the WHO declared the COVID – 19 pandemic and since then, there have been major impacts to daily life across the globe.
11. It is not an appropriate time for the respondent to insist on the same terms of the CBA and or contracts that have been rendered unenforceable by an Act of God which was in the contemplation of the parties at the time the CBA was entered into. Despite the pandemic that caused many employees in other sectors to be laid off, the claimant has not taken such drastic measures and for close to two years has maintained the respondent members on the payroll despite the economic hardships. The reasons given in the strike notice have been subject of a dispute declared by the parties and a conciliatory process activated and recommendation made and therefore the respondent's decision to call the strike is illegal.
12. The timing of the strike notice is in bad faith as the 7 days' notice period is set to lapse on 3<sup>rd</sup> May, 2022 which is a Public Holiday and unless the court orders the respondent to suspend the same the strike will commence with devastating effect on the economy and disrupt the entire aviation industry in Kenya. The public and the claimant shall suffer irreparable losses unless the threatened strike is stopped pending the hearing of the suit.
13. Ms Munene also filed a Further Affidavit and avers that the claimant board in a meeting held on 30<sup>th</sup> January, 2020 approved a salary adjustment for the years 2016 to 2019 at 6% inclusive of the annual increment translating to a total cost of ksh.231.3 million and which decision was not subjected the SRC guidelines. The claimant wrote to the SRC about its inability to pay a salary increment at 13% together with an annual increment due to the financial challenged posed by COVID-19.
14. The claimant wrote to the SRC for an advisory with regard to salary increment and in a letter dated 18<sup>th</sup> October, 2021 responded that the claimant review of salary at 6% annually was within the parameters advised by SRC and that once the negotiations were concluded, the claimant to revert to the SRC for clearance on the negotiated CBA so as to facilitate registration with the court.



15. While the claimant was engaging the SRC the respondent instead reported a dispute to the Minister and a conciliator was appointed and during negotiations the claimant offered a salary adjustment for the years 2016 to 2019 at 6% which was approved by the SRC by letter dated 18<sup>th</sup> October, 2021 and the claimant offered the respondent that any amount paid above the 6% basic salary review would not be recovered from the employee. Such position was informed on the need for sustainability, suitability and affordability of the total wage bill. An award of 13% as demanded for by the respondent for the CBA duration is above the SRC recommended percentage.
16. On 17<sup>th</sup> February, 2022 the parties held a meeting where the claimant presented the financial implications of the different salary awards to the respondent but the negotiations stalled at the salary adjustments of;
  - Management at 0.67%
  - Union at 2.8%.
17. The conciliator could not reconcile the parties and a Certificate of Unresolved Dispute issued.
18. Further negotiations on 11<sup>th</sup> March, 2022 resulted in the respondent lowering the demands to a 11.5% while the claimant maintained its 0.67% salary adjustment. Further and with a view to resolve the long standing conclusion of the CBA the claimant offered a 1% salary adjustment for each year being an additional cost of ksh.115.7 million in terms of salary arrears over and above ksh.231.3 million costs associated with the 0.67% increase per year.
19. Despite the agreement on the basic wage, on the date the CBA was to be signed the respondent introduced a new item of house allowance for the year 2016 and 2017 which was not a discussion item. This had not been part of the negotiations and as a result the respondent has now issued a strike notice dated 26<sup>th</sup> April, 2022 and leading to these proceedings.
20. The claimant in reply filed the Replying Affidavit of Moss Ndiema the Secretary General of the respondent union and who avers that the respondent has a Recognition Agreement with the claimant but has not been able to conclude a CBA for the period of 2016/2019 due to laxity and non-commitment by the claimant. On 3<sup>rd</sup> November 2015 the respondent issued the claimant with its proposals for the revision of the CBA and on 11<sup>th</sup> December, 2015 did a counter-proposal. The claimant made an offer of 6% basic salary increase for the years of 2016 and 2017 in addition to the annual increment and from 15<sup>th</sup> August, 2019 parties have held several negotiations meetings and a consent signed showing completion of the same with regard to the CBA.
22. Mr Ndiema also avers that on the negotiated items, the parties agreed to the following increments;
  - a. Basic salary by 7% for 2016;
  - b. 7% for 2017;
  - c. 2% for 2018; and
  - d. 2% for 2019
23. These increments to be over and above the annual increments with the cumulative increase being 18% for the 4 years.
24. Parties also agreed to adjust house allowance for the unionisable employees in Grades S2, S3, and S4 and the arrears be paid. While the claimant adjusted the house allowance effective December, 2019 and paid the arrears for 2018 and 2019 they have declined to pay the arrears for 2016 and 2017.



25. The signing of the CBA was never to be as the respondent was subsequently frustrated by the claimant who has been corresponding with SRC seeking their opinion on the wage increases already negotiated and agreed upon.
26. The SRC through letter of 13<sup>th</sup> December, 2019 advised the claimant to conclude and execute the CBA with a total cumulative basic salary increase of 13% in addition to the accrued annual increments for the entire CBA period. The claimant failed to heed the advice of the SRC and undermined the guidelines by making revisions and alterations to combine the basic salary increase and annual increment which had already been paid for the years 2016 and 2017.
27. The claimant revised the salary increase from the agreed rates to 6% for the years 2016 to 2019 inclusive of the annual increment which in effect was a unilateral alteration and negative pay increase and the employees were to suffer recoveries from their already earned pay.
28. The respondent as a Union has accepted the SRC advice notwithstanding the fact that it fell short of the 18% increase negotiated and agreed with the claimant who instead of executing the CBA wrote back to SRC in October, 2021 seeking to vary the implementation of 13% wage increase to be in addition to the annual increment negating the element of the increase which has no justification.
29. Mr Ndiema avers that on 28<sup>th</sup> October, 2021 the respondent reported a dispute to the Minister on the claimant's refusal to conclude and implement the 2016/2019 CBA and conciliation process was initiated and concluded with the issuance of a Certificate of Unresolved Dispute on 26<sup>th</sup> April, 2022.
30. Following the deadlock, the respondent having been frustrated by the claimant for over 5 years was left with no option but to issue a strike notice on 26<sup>th</sup> April, 2020 [2022].
31. While the respondent's members have gone without a salary increase for the last 5 years since 2016 the claimant's management staff were awarded a wage increase through Memo dated 20<sup>th</sup> April, 2022 which denied the respondent fair play and hence the strike notice to protect the right of its members. The purported reference to COVID-19 pandemic by the claimant is misplaced and the finalisation of the CBA has been pending since the year 2016 and the respondent and its members have been subjected to extreme hardship and only left to go on strike as the only legitimate action.
32. On 6<sup>th</sup> December, 2021 the Secretary General of COTU9K) through a letter to the claimant and implored them to finalise the CBA for implementation but this did not bear fruit. Indeed the court will appreciate that JKIA has attained the current status through the hard work and impute of all employees and such should be recognised and addressed accordingly.
33. The claimant admitted through the Affidavit of Margaret Munene that they executed a CBA but have failed to implement or register with the court. The claimant has continued to revise the offers given by the SRC by preparing unacceptable drafts of the CBA and are now blackmailing the respondent to sign in acceptance.
34. The CBA which was concluded under the leadership and guidance of the Federation of Kenya Employers on the 15<sup>th</sup> August, 2019 is the proper document for execution by the parties. The alleged COVID-19 pandemic affected was to all sectors and arose outside the subject period of 2016 to 2019 during which the claimant had already made budgetary allocation for the monetary items and the application by the claimant has no merit and should be dismissed with costs.
35. The parties filed written submissions and attended court and made oral highlights.
36. The claimant as the applicant submitted that it has a prima facie case with probability of success under Article 41(2) (d) of the Constitution workers have a right to go on strike but the right is not absolute



and is limited in terms of Section 78(1) of the LRA in respect to persons engaged in essential services which has been defined under Section 81 of the LRA as a service whose interruption would probably endanger life or health of a population. Air traffic control services and civil aviation telecommunication services have been listed in the fourth Schedule to the LRA as essential service and anyone joining the aviation industry is presumed to know the limitation the right to strike.

37. The issue in dispute is whether the terms of the 2016/2019 CBA have been agreed upon and the reason the same has not been executed. Negotiations have been concluded save for the issue of house allowance and in March, 2022 the claimant proposed a salary adjustment of 1% for each year from 2016 to 2019 and the payment of arrears within a period of 6 to 12 months factoring the financial status of the claimant.
38. In Petition No.48 of 2020 the court declined to issue the orders sought since the Union had not obtained the SRC advice in CBA negotiations contrary to Article 230(4) and (5) of the Constitution which is mandatory and binding as held in Teachers Service Commission v Kenya National Union of Teachers (KNUT) & 3 others [2015] eKLR. It was wrong for the respondent to issue a strike notice yet the parties were negotiating the CBA yet to be executed and could therefore not be implemented. The subject CBA for the period of 2016/2019 cannot be enforced by virtue of Section 60(6) of the LRA and the strike notice is unlawful.
39. The respondent's proposed salary increase being 2016 at 7%, 2017 at 7%, 2018 at 2% and 2019 at 2% in addition to the annual increments was reviewed by the SRC which made provision for salary increment to be within a limit of 13% in addition to the annual increment and upon the claimant reviewing its financial status and COVID effects was unable to pay a salary increment of 13%.
40. On the issue of house allowance, the claimant submitted that it communicated to the respondent that it needed to seek approval of the Board to pay house allowances for the years 2016/2017 since the only approval received was for the years 2018/2019. After this period, negotiations were frustrated by an Act of God.
41. The claimant is likely to suffer irreparable injury which cannot be adequately compensated in damages if the strike notice is not suspended to allow the parties to conclude the negotiations. A strike will affect operations of the claimant in all airports and airstrips countrywide having the effect of possible crippling the economy. The JKIA has been positioning to become a premier hub in Africa and the intended strike will embarrass and frustrate the government efforts to revamp the aviation sector in the country and the timing of the same is in bad faith. It will be a fatal blow to the tourism sector which has made bookings for summer holidays from both internal and local tourists.
42. In Kenya Ferry Services Limited v Dock Workers Union (Ferry Branch) [2014] eKLR the court held that the applicant would suffer irreparable loss and in the public domain hundreds of workers, traders, citizens and non-citizen who rely on the ferry services provided by the applicant to move between the south coast and Mombasa Island and other parts of the country. In this regard, the orders sought should issue.
43. The claimant submitted that the balance of convenience favours that as held in American Cyanamid Co. v Ethicon Ltd [1975] 1 ALL ER that in trying to resolve conflicts, the court must decide difficult questions of law and one consideration is whether damages can compensate the wronged party and the balance of convenience.
44. The respondent submitted that it has a counter-claim following frustrations by the claimant in its efforts to negotiate the renewal of the CBA since the year 2016, a period of 7 years. All efforts to review



and conclude the negotiations despite the intervention of the Minister have been frustrated by the claimant. This led to the strike notice which prompted the instant suit.

45. The parties had reached and concluded a CBA until the claimant sought the advice of the SRC on 13<sup>th</sup> December, 2019 and the claimant has failed to follow the given advice which has exposed unionisable employee to loss of the purchasing power and heavy inflation. The management revised their wage offer from 6% per annum to 0.67 against an earlier rate of 6% per annual for 4 years expiring December, 2020. The respondent was left with no choice but to issue notice to withdraw labour and the counter-claim is seeking for orders that the right to strike be confirmed; the claimant be directed to sign the CBA with an increase of 3.25% per annum in addition to annual increment for the years 2016 to 2019 each and the CBA be presented in court within 7 days. In the alternative the respondent is seeking for orders that the claimant be ordered to increase the salary at agreed rates of 7% for the year 2016 and 2017 and 2% for the years 2018 and 2019 each. The claimant to pay house allowance arrears for the years 2016 and 2017; a reinstatement of annual increment for the years 2020 and 2022; payment of damages for violation of fair remuneration and fair working conditions rights.
46. The claimant has therefore not established justifiable grounds to warrant the grant of injunctive orders and the application should be dismissed with costs.
47. The respondent has relied on the case of *Kenya Ferry Services Ltd v Dock Workers Union* cause No.338 of 2016 where the court dismissed the employers application seeking injunction to stop the workers from striking after a stalemate in negotiating the renewal of a CBA and the case of *Federation of Women Lawyers (FIDA) Kenya v Kenya National Union of Nurses & others* Petition No.67 of 2017 and the court held that there was a lawful strike following the employer refusal to negotiate a CBA.

### Determination

48. At this stage of the proceedings, the single issue for determination is whether the court should issue orders restraining the respondent from engaging in a strike and a suspension of the strike notice dated 26<sup>th</sup> April, 2022 pending the hearing of the suit.
49. The court will grant a prohibitory injunction on the principles set out in the case of *Giella v Cassman Brown & Co. Ltd.* (1973) EA that;

The conditions for the grant of an interlocutory injunction are now, I think, well settled in E.A. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be granted unless the applicant might otherwise suffer irreparable injury, which would not be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.

50. The conditions of a prima facie case, chance of suffering irreparable injury and balance of convenience must be weighed based on the facts of the case.
51. These principles are further bolstered in the case of *American Cyanamid v Ethicon* [1975]AC the court held that;

A court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the plaintiff from irreparable injury; mere inconvenience is not enough. Irreparable injury means injury which is substantial and can never be adequately remedied or atoned for by damages not injury that cannot be repaired.



... The object of interlocutory injunction is to protect the plaintiff against injury by violation of his rights for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at trial.

52. The object of the interlocutory injunction is therefore to protect the applicant against injury by violation of right for which there is no adequate compensation in damages recoverable in the action if the dispute were resolved in favour of the applicant at the trial; but the applicant's need for such protection must be weighed against the corresponding need of the respondent to be protected against injury resulting from having been prevented from exercising its own legal rights for which it cannot be adequately compensated under the applicant's undertaking in damages if the dispute were resolved in the respondent's favour at the trial.
53. The Court must weigh one need against another and determine where the balance of convenience lies. See *Chebii Kipkoach v Barnabas Tuitoek Bargarora & Another* [2019] eKLR; *Paul Gitonga Wanjau v Gatbuthis Tea Factor Company Ltd & 2 Others* [2016] eKLR; and *Anne Kinyua v Nyayo Tea Zone Development Corporation & 3 others* [2012] eKLR.
54. It is not contested that the parties are engaged in essential services. there is a Recognition Agreement and there is a CBA. There have been on-going negotiations for the CBA covering the period of 2016/2019. The Conciliator has issued a Certificate of Unresolved Dispute dated 26<sup>th</sup> April, 2022.
55. At the core of the dispute herein is provision of essential services and the right to go on strike.
56. Whereas the right to strike is enshrined in Article 41 of the *Constitution*, 2010 essential service is defined in Section 81 of the *LRA* as a service whose interruption would probably endanger life or health of a population, and the Cabinet Secretary is given the liberty to prescribe the list of essential service providers. Under the 4<sup>th</sup> Schedule to the *LRA* the list of essential services includes Air Traffic Control Services and Civil Aviation Telecommunications Services covered by the claimant entity and a state corporation.
- the right to industrial action is not absolute and is therefore subject to limitation within the parameters of Article 24(1) of the *Constitution*, 2010 which provides;
- (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all the relevant factors including: -
- a) The nature of the right or fundamental freedom;
  - b) The importance of the purpose of the limitation
  - c) The nature and extent of the limitation;
  - d) The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others;
  - e) The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
57. There must be a balance to protect all fundamental rights in a reasonable and justifiable manner based on human dignity upon taking into account the nature of right, purpose of the limitation, there is no prejudice and to ensure less restrictive means to achieve the purpose. In this regard, account must be given to the employees' constitutional right to participate in industrial action, which ought to be



balanced against the general public interest and particularly the sector operated by the claimant, the Air Traffic Control Services and Civil Aviation Telecommunications Services.

58. Ms Munene for the claimant avers in the Supporting Affidavit dated 28<sup>th</sup> April, 2022 that on 30<sup>th</sup> January, 2020 the claimant Board approved an annual salary increment for the years 2016 to 2019 at 6% each year at a total cost of ksh.231.3 million with a view to conclude the CBA for the period of 2016/2019.
59. This is a period in arrears.
60. Before the matter was referred to the SRC for its advisory, parties had negotiated and arrived at a consensus.
61. The court takes it such consensus had a basis and the claimant had addressed the financial abilities and made appropriate allocations covering the period of 2016 to 2019 way before the emergence of COVID-19 pandemic. the entity of SRC under its constitutional mandate was not to negate the negotiations but to ensure adherence to applicable guidelines.
62. Indeed on 8<sup>th</sup> August, 2019 following at a meeting of the parties, under the chair of the Federation of Kenya Employer upon negotiations it had been agreed that salary increments be 2016 at 7%, 2017 at 7%, 2018 at 2% and 2019 at 2% in addition to the annual increments. A CBA was to be signed on 14<sup>th</sup> August, 2019.
63. In a communication and advisory of the SRC to the claimant dated 13<sup>th</sup> December, 2019 the directions with regard to basic salary and house allowance were that;
- i. Basic Salary: to be within a limit of 13% for the period of the CBA in addition to the annual increment
  - ii. House allowance: to be within the rates provided for in the SRC Circular ... dated 10<sup>th</sup> December, 2014 ... taking into consideration equivalent job groups within the Civil Service and the clustering per region. ...
64. The court reading of the given advisory is that the upper limit with regard to basic salary review was 13%. An allocation of 6% is a lower scale weighed against the given advisory even though this is within the allocated ceiling.
65. The other matter fomented by the SRC was that the increase to the basic salary was in addition to the annual increment. In addition to.
66. On 13<sup>th</sup> December, 2019 the SRC wrote to the claimant and gave its advisory to the effect that a salary increase up to a limit of 13% for the period of the CBA (2016 to 2019) in addition to the annual increment was possible. This advisory was before the noted Act of God following the COVID-19 Pandemic declared worldwide in March, 2020.
67. Mr Ndiema in his Replying Affidavit of 17<sup>th</sup> May, 2022 at paragraph 9 avers that the claimant paid for arrears of house allowances covering the years 2018 and 2019 but has refused to pay the house allowance arrears due for the years 2016 and 2017.
- Parties have been addressing a past phase of 2016/2019.
68. As correctly noted by the chair of the meeting held on 16<sup>th</sup> July, 2019 parties ought to be discussing the CBA covering the period of 2020/2021 taking into account there are three phases of CBA cycles pending, 2016/2017, 2018/2019 and 2020/2021.



69. The above put into account, pending the hearing of the main suit, the right to engage in industrial action being constitutional and meant to insulate employees to enjoy collective bargaining in the protection of their economic interests and taking note that essential services sector under which the claimant operates carry heavy ramifications to the public and the entire national economy, a balance of rights is imperative.
70. The claimant has a legitimate expectation that its employees and members of the respondent will continue in service to avoid interruption of services which probably endanger life or health of a population. The right to the public to essential services must be protected.
71. On the other hand, to forestall any industrial action, the claimant must return to the table and engage the respondent in negotiations within the parameters and advisory of the SRC now issued. Apply good faith and stop all else to achieve consensus taking into account that the respondent enjoys a constitutional right to withhold labour and the claimant is offering an essential service under which the respondent members are serving. To take the approach that there is COVID-19 pandemic and the SRC has given an advisory and so the claimant will not budge on the CBA negotiations will not foster the symbiotic relations contemplated under the Recognition Agreement. It will only escalate the dispute.
72. As noted above, the claimant has addressed the salary increment for management. The respondent members have since the year 2016 waited for a review of salary increment to date. The SRC has since given directions with regard to basic salary and house allowance based on records submitted by the claimant and allowed a limit of 13% for the period of the CBA (2016 to 2019) in addition to the annual increment on good basis which follows a review of various financial records of the claimant and the wage review guidelines.
73. The SRC advisory was given on good cause and the claimant cannot negate it for other ulterior reasons. Such does not place the claimant in good standing to enjoy the orders sought in the interim.

From the foregoing, on the facts and the principles outlined above, a conditional injunction shall issue that;

- a. an Order is hereby issued prohibiting and/or restraining the respondent from executing the Strike Notice issued on 26<sup>th</sup> April, 2022 within the next 14 days;
- b. the claimant shall invite the respondent and conclude the CBA negotiations covering the 2016/2019 period based on the SRC advisory of 13<sup>th</sup> December, 2019;
- c. the respondent shall respond to the invitation (b) above in good faith; and
- d. Interim orders shall remain in force for the next 14 days only.

**DELIVERED IN COURT AT NAIROBI THIS 6<sup>TH</sup> DAY OF JUNE, 2022.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Okodoi

