



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO. 34 OF 2019**

(Before D.K.N.Marete)

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

**VERSUS**

**KAHUTI WATER & SANITATION CO. LIMITED.....RESPONDENT**

**RULING**

This is an application dated 7th October 2020, seeking the following orders of court;

- i. THAT this Application be certified urgent, service therefore be dispensed and the same be heard exparte in the first instance.
- ii. THAT the Honourable Court do and hereby reviews its judgment delivered on 21st September 2020 to include the final orders on General Wage Increase and Duration and effective Date of the agreement.
- iii. THAT the Honourable Court do and hereby finds that the two issues indicated herein were among other issues in dispute which the court was invited to make a final determination.
- iv. THAT the Honourable court do issue any other order it deems fit to meet the ends of justice.
- v. THAT cost of the application be in the cause.

It is grounded as follows;

- i. THAT on 21<sup>st</sup> September 2020 the Honourable Court delivered a judgment in regards to the claim placed before it which included clauses on General Wage Increase and Duration and Effective Date of the Agreement.
- ii. THAT in regard to general wage increase there was a dispute since the Respondent was pegging increment subject to achieving a monthly turnover of Kshs.11 million which the claimant disputed as per the claimant's final submission paragraph 16, 17, 18, 19, 20 and 21.
- iii. THAT the judgment did not include final orders as to whether the parties do adopt the Respondent's proposals of 15%, 12% and 10% for the first year and 13%, 10% and 9% for the second year or adopt the recommendations of the Central planning and Monitoring Unit.
- iv. THAT the claimant invites the Honourable court to issue final orders on the two clauses of the Collective Bargaining Agreement as to enable the parties to conclude the Collective Bargaining Agreement.
- v. THAT the court did not issue final orders on the duration and effective date so as to set a date when the collective bargaining agreement meet(sic) *shall take effect*.
- vi. THAT in the circumstances it is only fair and just that the Honourable Court reviews the judgment to include the final orders on the two issues.

The Respondent has not filed any pleading in answer to the application. Instead, counsel for the Respondent, a Mr. Kilonzo at the hearing on 26th November, 2020 submitted that they were not opposed to the application and indeed had not made a response to the same. This was due to its basic nature, a clarification of the judgment of court.

The issues sought to be reviewed per paragraph 2 of the application comprise as follows;

- i. General Wage Increase
- ii. Duration and Effective date of the Collective Bargaining Agreement

This court is called upon to review these issues with a view to facilitating a completion and conclusion of the CBA now in dispute. The court addresses these as follows;

- i. General Wage Increase

It is now, more than ever necessary that parties to uneconomic dispute like the present case should be compelled to negotiate their matters to a logical conclusion. This tendency to refer these matters to court for arbitration frustrates the spirit of appropriate Labour Relations- the shop floor and its crucial position in amicable solution of the issues in dispute.

In the instance case, as is usual with all others, what the court witnesses is a recalcitrant party who is unwilling to negotiate their bit and instead chooses to throw everybody, the court included, into the foray. This is unfortunate.

The Claimant/Respondent raises the following as their take in General Wage increase.

Salary increase to employees will be as follows;

**1st Year**

Group A and B	15%
Group C	12%
Group D	10%

*For this to happen IF the Company should be in a position to raise Kshs.11,000,000.00 per month*

**2nd Year**

Group A and B	13%
Group C	10%
Group D	9%

It is their further case that the pay set-up with the respondent is unfair and biased in that the management staff who are fewer in number have continued to enjoy massive salary increments whereas the respondent uses lack of adequate revenue as a guise for denial for the salary increments.

The Respondents on the other hand is agreeable to an increment but subjects this to a condition of a revenue turnover of Kshs.11,000,000.00. This is as follows;

“The Claimant Union is proposing a general wage increase 11% and 9.5% spread over year one and two respective while the respondent had offered to increase wages by 12.33% and 10.67% for years one and two of the agreement albeit on condition that revenue grows from Kshs.5,000,000.00 to Kshs.11,000,000.00 to sustain the resultant wage bill. The respondent’s revenue has continuously suffered from continuous breakdown of infrastructure and landslides which in turn leads to water shortage and no billing and a further drop in revenue by Kshs.378,636,000.00. The respondent posted a drop in revenue as exhibited by the CPMU report on collections in year 2019. This drop in revenue has been closely followed by the Covid-19 pandemic in 2020 which has led to further drop in water consumption by residents of Kangema and Kahuro. The respondent cannot afford a salary increase during these unprecedented times when business continuity and saving jobs is the priority.”

The court in pursuance of a justification and breakthrough in this dispute referred the matter to the Central Planning and Monitoring Unit (CPMU) of the Ministry of Labour and Social Protection who assessed the economic situation of the Respondent and her ability to raise salaries during the period in dispute. It established that in this sector and circumstances there was a Consumer Price Index rise of 13.2% for the two year period.

Other notations of the CPMU were that the respondent is a viable economic venture generating reasonable profits every year.

This is part of its observations;

## ANALYSIS OF THE ISSUES IN DISPUTE

### General Wage Increases

1. 1. The claimant union is demanding an average general wage increase of 20.5% spread over two (2) years. This translates to an average wage increase of 11% in the first year and a further average wage increase of 9.5% in the second year. The Respondent has made an offer to increase the wages by an average of 12.33% in the first year and further increment of 10.67% in the second year on condition that the respondents' monthly revenue collection increases to Kshs.11,000,000.00 otherwise they maintain a nil increment.

2. ...

1. 3. ...

1. 4. Assuming that the CPI entitlement is upheld, the implication would be an additional bill of Kshs.399,586 in the first year and a further additional bill of Kshs.425,958 in the second year or a total additional bill of Kshs.825,544 for the two years.

Now that the parties are disagreeable on the way forward, and looking at the merits of the respective cases, I find that a case for general wage increment ensues. I peg this to the findings of CPMU on their analysis of the consumer price index. This is 13.2% for the two year period and I so award.

It is however noted that the analysis by the CPMU took into account and applied to the last two (2) years, the intended period and duration of the CBA which was to run from 1st July, 2018 to 30th June, 2020. This time is spent and the CBA can only be futuristic. It cannot be backdated. It is therefore behoves the court to engineer sense and fairness to the CBA by raising the CPI by two percentum,(2%.) The working CPI now becomes 15.2% and the court orders an increment of 10% in the first year and 5.2% in the second year, this applicable to all cadres of employment.

#### ii. Duration and effective date of the Collective Bargaining Agreement

The law does not specifically provide for the lifetime of duration of a CBA. This is left to the discretion and choice of the parties. It is left to the parties to negotiate and agree.

However, custom has had effective impact on this. Generally, practice in this jurisdiction has it that CBAs run their course for two (2) years and thereafter subject themselves to further negotiations and renewal. For our purposes, I adopt and order this practice in the circumstances.

In the circumstance of this case, the CBA negotiation has stalled due to squabbles *inter-partes*. The recognition agreement was had on 2nd June 2018 and thereafter, commencement of CBA negotiations ensued by a letter dated 13th July instant.

#### iii. Effective date of the CBA

The law is specific on the effective dates of the CBA. This is the date of registration of the same. Section 59 (5) of the Labour Relations Act, 2007 provides for this as follows;

“A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial Court and shall be effective from the date agreed upon by the parties.”

This is the law and this court adopts the position for purposes of this dispute and CBA.

I further order and direct that this CBA be negotiated, finalised and registered within twenty one (21) days of these orders of court for fairness and expediency.

I am therefore inclined to allow this application and review the issues raised on the terms above. This comes out as follows;

i. That the general wage increase be pegged at 10% in the first year and 5.2% in the second year of the CBA for all cadre of employees.

ii. That the duration of the CBA be and is hereby set at 2 years.

iii. That the effective date of the CBA be the date of registration of the same.

iv. That parties shall bear their cost of this application.

**Dated and delivered at Nyeri this 26th day of January 2021.**

**D.K.Njagi Marete**

**JUDGE**

**Appearances**

1. Mr.Muunda for the Claimant Union
2. Mr.Kilonzo for the Respondent