



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 18 OF 2020

KENYA UNION OF SUGAR PLANTATION

& ALLIED WORKERS.....CLAIMANT

VERSUS

BUTALI SUGAR MILLS LIMITED.....RESPONDENT

JUDGMENT

1. The Kenya Union of Sugar Plantation and Allied Workers (the Union) sued Butali Sugar Mills Ltd (the Respondent) on 18 February 2020, and the Issue in Dispute was stated as:

House allowance for mill tractor drivers.

2. The Union and the Respondent have a recognition agreement. The parties have negotiated and signed collective bargaining agreements, and the last such agreement was from 1 January 2018 to 31 December 2019.

3. During the negotiations for the aforesaid collective bargaining agreement, the parties could not agree on payment of house allowance for mill cane tractor drivers.

4. The trade dispute was taken through conciliation, but the partners could not agree, hence this Cause.

5. The Respondent was of the mind that the drivers were paid a consolidated wage which included house allowance. The drivers are paid on a piece-rate basis.

6. Section 31 of the Employment Act, 2007 provides the irreducible (minimum) as far as employees housing is concerned.

7. As far as housing is concerned, the Act places a statutory burden on the employer to provide housing accommodation to employees at the first instance.

8. Where the employer is unable to provide the housing, then it should pay an allowance to cover rent to the employee.

9. The requirement to provide housing or an allowance to cover rent, in the view of the Court, is a general entitlement to all employees without distinction on type and nature of the contract, save for the exceptions on consolidation and agreement in a collective bargaining agreement as contemplated by section 31(2) of the Employment Act, 2007, or in any other law.

10. In other words, the employer's statutory obligation to provide housing or pay house allowance does not arise where an employment contract expressly provides for a consolidated salary including an element to cover for rent or where agreement is reached in a collective bargaining agreement.

11. However, apart from the two exceptions, the Court has found 2 other exceptions.

12. One of the exceptions is anchored in a different and primary labour statute, the Labour Institutions Act.

13. Under section 46 of the Labour Institutions Act, the Cabinet Secretary, Labour, is empowered to publish a Wages Order upon advice from the General Wages Council or the Agricultural Wages Council.

14. The Cabinet Secretary, Labour has, pursuant to the power, published the Regulation of Wages (General) Order and numerous Regulation

