



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE NO. E005 OF 2021

KUDHEIHA WORKERS..... CLAIMANT

VERSUS

THE BOM MENENGAI HIGH SCHOOL.....1ST RESPONDENT

THE PRINCIPAL/SECRETARY TO BOARD.....2ND RESPONDENT

RULING

1. This ruling is in respect of the Claimant's Application dated 29th January, 2021 filed under certificate of urgency on 3rd February, 2021, by one Davis M. Gitonga on behalf of the claimant seeking the following orders;

1) Spent.

2) That the Respondent has failed to implement salary scale and allowances as per the DPM Circular provided for by the government to provide for salary scale for public and civil servants.

3) That the employer has proceeded to effect pay cut from employees' salaries without their consent and has further denied or refused to pay their allowances.

4) That the employer has failed to practice fair labour practices by victimizing employees who try to defend their labour rights on what is dutifully theirs.

5) That there is need to urgently secure the rights of these employees and for the employer to be compelled to recognize them as public servants as provided for in the legal notice No. 39 of 2013 known basic education regulation.

6) That the employer had denied employees right to fair labour practices and should be compelled to deduct and remit the union dues and also be instructed to implement salary scales and allowances.

7) The employer is operating in total disregard to the rights of employees as provided for in the Constitution of Kenya 2010 read together with the Employment laws of Kenya.

2. The application is supported by the grounds on the face of the application and the affidavit sworn by **Susan Wanjiru**, the Claimant's Branch secretary, on the 29th January, 2021 and based on the following grounds:

a) That the claimant has presented the grievances of the employees to the employer who has remained adamant on resolution of the said issues.

b) That the non-teaching staff had requested for salary improvement pursuant to the DPM Circular provided by the government but the respondent has been adamant in implementation of the said salary scales.

c) It is stated that the Respondent has now proceeded to effect pay cuts on the employees salary without their consent and failed completely to pay the allowances due to the said employees.

d) That the employees at the respondent's employ are transferred unnecessarily therefore victimizing the said employees.

e) That the claimant's members are kept on short term contracts when they have served the respondent for so many years. Further that the contract given to the employees is not comprehensive as the Respondent does not include crucial information such as salary payable contrary to the law.

f) That the actions of the Respondent amount to violation of the claimant's members right to dignity and exposes the union and its members to ridicule and disrepute therefore urged this Court to allow the application.

3. In opposing the application, the Respondent through the Honourable Attorney General 's office, filed grounds of opposition dated 3rd March, 2021, on 4th March, 2021 on the ground that the Orders sought are ambiguous and incomprehensible and the same cannot issue. therefore, the application is incurably defective, pre-mature, misconceived and an abuse of Court Process and a proper candidate for dismissal with costs to the Respondent.

4. On 4th March, 2021 this Court directed parties to dispose of the application by way of written submissions with the Claimant/ Applicant filing on 9th April, 2021 and the Respondent filed on 29th March, 2021.

Applicants' submissions.

5. The applicant herein submitted that its members are public servants as held by Justice Abuodha in **Nyeri Misc Cause Number. 9 of 2013; the B.O.M Kagumo teacher training college –v- KUDHEIHA Workers** therefore ought to enjoy all benefits provided for under section 18 and 19 of the Legal Notice number 39 of 2015 of the Basic Education Act which provides for the salary increase as per the DPM Circular Which Notice has not been revoked.

6. It was submitted that the Respondent is obliged to implement the said DPM Circular requirement as directed without fail which the respondent instead of implementing the salary increased subjected the claimant's Members to pay Cuts and signing of new short term contracts which does not indicate the salary payable to its employees therefore breaching section 10 of the Employment Act.

7. The applicant therefore urgent this Court to compel the respondent to implement the said DPM Circular as directed by the Government.

Claimant/Respondent's submissions.

8. The Honourable Attorney General submitted that the application herein is incompetent and the Orders as framed cannot issue as the prayers are vague and incomprehensible. It was argued that pleadings have to be precise leaving no room for speculation.

9. It was also submitted that the application is not supported by any provision of law to enable this County grant the reliefs sought therefore urged this Court to dismiss the application with costs to the Respondent.

10. I have examined the averments of the parties herein. As submitted by the respondents, the prayers being sought to be issued by the applicant are vague. It is not clear what the applicant wants this court to direct the respondents to do.

11. The applicants should have explained through their affidavit and through evidence what the respondents have done and what they should actually do as per the law.

12. That being the position, I find the application without merit and dismiss it accordingly.

13. Costs in the cause.

Ruling delivered virtually this 22ND day of JUNE, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Leting holding brief Ondieki for respondent – present

Claimant – absent

Court Assistant - Wanyoike