



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2222 OF 2015**

**KENYA UNION OF COMMERCIAL, FOOD**

**AND ALLIED WORKERS..... CLAIMANT**

**VERSUS**

**NATIONAL MUSEUMS OF KENYA.....RESPONDENT**

**JUDGMENT**

1. The Notice of motor application dated 7<sup>th</sup> November, 2019 prays for orders in the following terms: -

**1. Spent**

**2. Spent**

**3. THAT** this Honourable Court do and hereby issue a Notice summoning Dr. Mzalendo N. Kibunja, the Respondent's Director General, to personally attend Court on such date and time as shall be set by the Court to show cause why he should not be punished for disobedience of an order of this Honourable Court.

**4. THAT** an order do and is hereby issued directing the Respondent's Director General Dr. Mzalendo N. Kibunja to sign the Draft Collective Bargaining Agreement for the period 1<sup>st</sup> July 2013-30<sup>th</sup> June 2017 upon his appearance in Court or any other date and time as the Court shall order.

**5. THAT** in the event of failure by Dr. Mzalendo N. Kibunja to attend Court as summoned, this Honourable Court do issue a warrant to arrest directed at the Officer Commanding Station, Parklands Police Station to arrest and avail him in Court as soon as practicable.

**6. THAT** the Hon. Court on its own motion, do proceed to punish Dr. Mzalendo Kibunja, the Respondent's Director General for disobedience of the Order of the Court and in accordance with the laws of the Republic of Kenya.

2. The application is premised on reasons set out in the Notice of Motion

marked (i) to ((xvi) the nub of which is that the parties have since concluded negotiations on the Collective Bargaining Agreement for the period 1<sup>st</sup> July 2013 to 30<sup>th</sup> June, 2017.

3. That on 2<sup>nd</sup> November, 2018 Justice Ongaya J. issued an order upon hearing counsel for the applicant and Counsel for the respondent that:-

**“1. That the Collective Bargaining Agreement is agreed upon and per the draft collective Bargaining Agreement on record.**

**2. That parties to agree on the date of signing Collective Bargaining Agreement for onward registration by the Court in normal manner failing which Court to validate the date.**

**3. That each party to bear own costs.**

#### **4. That a decree to issue accordingly.”**

4. That the respondent has failed and/or neglected to sign the Collective Bargaining Agreement in violation of the Court order and therefore the Director General of the respondent be summoned to Court to show cause why he should not be punished for disobedience of the Court order and also the Court direct the Director General to sign the Collective Bargaining Agreement upon appearance in Court on a day determined by the Court.
5. The application is opposed vide a replying affidavit of the respondent in which the respondent explains that it is ready and willing to sign the Collective Bargaining Agreement upon obtaining the advice and consent of the Salaries Review Commissions which procedure is mandatory and is well known by the applicant.
6. That it is not true that the said advice and consent was obtained from Salaries and Remuneration Commission before the Draft Collective Bargaining Agreement was concluded.
7. That the respondent being a parastatal fully funded by the National Treasury cannot conclude the Collective Bargaining Agreement before the advisory by Salaries Remuneration Commission has been obtained.
8. That the respondent has written several times to Salaries and Remuneration Commission on the matter and awaits its advice before the Collective Bargaining Agreement is signed.
9. That the Director General is not in contempt of the Court order referred to in the application which order speaks for itself.
10. That Collective Bargaining Agreement is voluntary as guided by Industrial Relations Act 2007, and International Labour Organization Convention 98 on the Freedom to Bargain.
11. That delay to sign a CBA, awaiting lawful step to take place cannot be the basis of a contempt of Court application.
12. That the application is an abuse of Court process and it be dismissed with costs.

#### **Determination**

13. The order issued by Hon. Byram Ongaya on 2<sup>nd</sup> November 2018 is self-explanatory and a plain reading of it shows that its execution was predicated on the parties' agreement on a date of signing the Collective Bargaining Agreement which date has not been agreed upon to date.
14. The said order provided an option in the event the parties did not agree on the date of signing by stating **“failing Court to validate the date.”**
14. It is clear that the respondent is following a known lawful procedure before it can sign the Collective Bargaining Agreement it being a public funded institution.
15. The applicant has not provided any evidence to show that Dr. Mzalendo Kibunja, the Director General of the Respondent is in willful defiance of the Court order dated 2<sup>nd</sup> November, 2018. In any event the learned judge provided an option for either party to take in the event there was no agreement.
16. It is not clear to me, what the Court meant by the statement **“failing Court to validate the date.”** It is up to the parties to approach Court to provide clarity on that aspect of the order and proceed to give directions on proper cause of action in this matter.
17. Accordingly, the application to commit Dr. Mzalendo N. Kibunja for contempt of Court lacks any basis and is dismissed.
18. Furthermore, the Court cannot order a party to negotiate a Collective Bargaining Agreement and or to sign the same since Collective Bargaining is entirely voluntary. Where parties fail to agree the dispute is to be resolved through statutory conciliation and/or other options provided in the Labour Relations Act, 2007 failing which an economic dispute is to be brought to the Court for adjudication on any demands made by the union to the employer in the cause of Collective Bargaining.
17. Accordingly, the entire application lacks merit and is dismissed with costs in the cause.

**Dated and delivered at Nairobi (virtually) this 23<sup>rd</sup> day of September,**

**2021.**

**Mathews N. Nduma**

**Judge**

**Appearances:-**

Mr. Macharia for claimant union

And Wahome for Salaries and Remuneration Commission

Federation of Kenya Employers for Respondent