



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KERICHO

ELRC CAUSE 70 OF 2018

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS.....CLAIMANT

VERSUS

GUSII WATER AND SANITATION

COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein filed a Memorandum of Claim dated 19th July, 2018, on the 31st July, 2018 on the basis that the Respondent had refused to negotiate the Collective Bargaining agreement.
2. It is stated that on the 2nd February, 2015, the claimant signed a recognition agreement with the Respondent and on 13th October, 2015 the claimant forwarded the Collective Bargaining agreement to the Respondents for consideration, however the Respondent refused to consider the same.
3. That several attempts to have the CBA agreed upon ensued therefrom till 9th December, 2016 when the Claimant reported a dispute to the ministry of Labour and a conciliator was appointed on 11th January, 2017 to adjudicate on the issue. However, on 20th February 2017, the Respondent wrote a letter to the conciliator denying any knowledge of trade dispute.
4. The claimant stated that it is the only party that attended the conciliation meetings in absence of the Respondent who had been equally summoned and the conciliator issued a certificate of disagreement on the 24th August, 2017. On 12th September, 2017, the Respondent wrote a letter to the conciliator requesting to participate in the conciliation meetings which the conciliator agreed and scheduled a meeting for 13th December, 2017 which the Respondent did not to attend as well.
5. The claimant states that the Conciliator issued another certificate of unresolved dispute on 14th June, 2018.
6. That the actions of the Respondent are bad in law and have subjected the Claimants members to unfair labour practices contrary to the Constitution of Kenya 2010 and ILO Convention 98.
7. The Claimant therefore prays for the following Orders;
 - 1) **That the Court direct the Respondent to negotiate a Collective Bargaining Agreement with the Claimant within 30 days from the date of the Judgment.**
 - 2) **That in the event the Respondent fails to negotiate within 30 days the Hon. Court do direct the parties to sign the claimant proposal as the Collective Bargaining Agreement.**
 - 3) **That the Honourable Court do declare the Respondents actions unfair labour practices.**
 - 4) **That the Hon Court do issue any other order it deems fit to adduce the cause of justice.**

5) Cost of the Suit to the Claimant.

8. The Respondent Entered Appearance on the 28th August, 2018 and filed a Response to the claim on the same day. The Respondent denies the contents of the Memorandum of claim and puts the claimant to strict proof thereof.
9. The Respondent contends that they never at any point refused to negotiate the Collective Bargaining Agreement rather that they delayed the negotiation due to unavoidable Circumstances.
10. It states that the Respondent is a public limited Company managed by board of directors elected by both private stakeholders and County shareholders which board had been suspended for a year between February, 2016 and 2017 and the board did not sit till the election of new ministers could be elected in march 2018. Further that it is the stakeholders that were forced to go to Court vide **Kisii High Court Petition number 5 of 2018** to have the Board properly constituted, which court after hearing the matter orders the Board members to be elected within 3 months effective 28.6.2018 and the process of electing directors began thereafter.
11. It thus contends that there was no proper board in place that would be able to negotiate the Collective Bargaining Agreement. Further that the Managing director of the Board has been ailing and was still hospitalized during that period.
12. It was stated that the Claimant's members are not subjected to any forced labour as alleged and that the Respondent is in the process of considering a salary structure prepared by its Human resource manager which will eventually form part of the CBA.
13. The advocate for the claimant sought to dispose of the claim by way of written submission which court allowed and the parties both filed their submissions on 13th October, 2020.

Claimants submissions.

14. The claimant submitted that the parties herein have a valid Recognition agreement entered pursuant to section 54 of the Labour Relations Act, 2007, which bound the Respondent to negotiate a CBA as envisaged under section 57 of the Labour Relations Act, 2007.
15. He argued that despite effort to have the matter resolved amicably the Respondent was adamant forcing the Claimant to report a dispute and a conciliator appointed as per Section 65(1) of the Labour Relations Act and the process was not successful as the Respondent did not attend the conciliation meetings.
16. He argued that the Respondent in their defence requested for 3 months to put their house in order and consider the CBA but have not filed or forwarded and counter proposal to the claimant for consideration.
17. He concluded by arguing that the Claimant members have a right to enter into a collective bargaining Agreement as provided for under Articles 41 and 47 of the Constitution and ILO Convention No. 98 and therefore prayed that the Claim be allowed as prayed.

Respondent Submissions.

18. The Respondent on the other hand submitted that they have always been willing to negotiate the Collective Bargaining agreement and that the delay was occasioned by managerial issued beyond their Control.
19. He argued that, **Kisii High Court Petition Number 5 of 2018** directed that the Board be formed within 3 months however the formation of the Board was challenged by **Kisumu ELRC Petition number 61 of 2018** which matter took a year to conclude. It was submitted that as soon as the Kisumu matter was concluded the Board approved a draft CBA and the same was forwarded to the Claimants Advocate sometimes before Corona Pandemic hit Kenya.
20. He submitted that the Respondent has been willing to negotiate the CBA and that the same has been forwarded to the Claimant for approval therefore the case should be brought to a close and each party to bare its own costs.
21. I have examined the averments of the parties herein. The respondent have contended that they never refused to negotiate a CBA with the claimant but that there were circumstances that warranted the none negotiation. They aver that a new board was established in 2018, after the orders of the court in Kisii High Court Petition No. 5 of 2018.
22. That being the position, it would have been easy to the respondent to demonstrate the steps they have put in place to ensure the CBA is negotiated since 2018. The respondents failed to do this.
23. It therefore follows that the respondents are willing to negotiate this CBA voluntarily. I therefore direct that the respondent shall forthwith engage with the claimants and conclude a CBA within 60 days.
24. The court will place a tag on the negotiations and issue further orders if the negotiation fail.
25. Costs to the claimant.

Dated and delivered in open Court this **21ST day of SEPTEMBER, 2021.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Court Assistant - Fred

No appearance for parties