



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 160 OF 2019**

**(Originally Mombasa Cause No. 485 of 2018)**

**AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT**

**VERSUS**

**ASSOCIATED MOTORS LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Amalgamated Union of Kenya Metal Workers (the Union) sued the Associated Motors Ltd (Respondent) before the Court sitting in Mombasa on 8 October 2018 and it stated the Issue in Dispute as refusal to negotiate and conclude the CBA.
2. On 9 November 2018, the Respondent applied to the Court to transfer the Cause to Nairobi and the application was allowed on 11 March 2019.
3. The Respondent filed a *Statement of Response* on 11 March 2019.
4. Pursuant to an oral application by the Respondent on 27 March 2019, the Court directed the Central Planning and Monitoring Unit to prepare a report on the dispute.
5. The Chief Economist, Ministry of Labour prepared and filed a report in Court in October 2019.
6. On 10 February 2020, the parties proposed that the dispute be determined based on the record and submissions to be filed, and the Union filed its submissions on 24 February 2020 while the Respondent filed its submissions on 23 March 2020.
7. The Court has considered the record and the the submissions.
8. The Union and the *Motor Trade & Allied Industries Employers Association*, a trade union/federation of which the Respondent is a member successfully negotiated and agreed several collective agreements and the last such agreement was for the period 1 July 2014 to 30 June 2016.
9. Through a letter dated 24 May 2016, the Respondent withdrew its membership from the Association. This prompted the Union to propose to the Respondent through a letter dated 28 March 2017 the negotiation of an individual collective agreement. The Union sent a proposed collective agreement to the Respondent.
10. The attempt at negotiations, under the umbrella of the Federation of Kenya Employers, was not successful and on 22 September 2017, the Union reported a trade dispute to the Cabinet Secretary, Ministry of Labour.
11. At a conciliation meeting held on 10 April 2018, the parties reached consensus on some of the items in contention and scheduled a meeting to discuss the outstanding issues.
12. No agreement was reached and on 19 July 2018, the Conciliator issued a Certificate of Unresolved Dispute in respect of some 12 issues.
13. The 12 issues the parties did not agree on were:
  - (i) Basic wage
  - (ii) General wage increment

- (iii) Leave travelling allowance
- (iv) Housing
- (v) Safari subsistence allowance
- (vi) Redundancy
- (vii) Non-unionisable staff
- (viii) Disturbance allowance
- (ix) Heavy-duty allowance
- (x) Commuter allowance
- (xi) Baggage allowance
- (xii) Effective date and duration of the Collective Agreement

14. These are the items the Court will examine (the Court notes that the Union introduced other item heads which were not pleaded and did not form part of the negotiations such as medical expenses, acting allowance, union officials and the like.

#### **Basic wage**

15. The determination of basic or minimum wages is the ordained duty of the Cabinet Secretary, Ministry for Labour acting on the advice of various Wages Council and the Court would be usurping the statutory role of the Cabinet Secretary by purporting to set minimum wages in any sector of the industry.

16. The Court has noted that the Central Planning and Monitoring Unit established that the existing wages paid by the Respondent were way above the prescribed minimum wages.

#### **General wage increment**

17. In determining a general wage increment, some of the factors the Court should consider include the cost of living/inflation, comparability, historical factors, and financial performance of the employer, productivity and previous Court awards.

18. The Union proposed a general wage increase of 15% for each year (2016/2017 and 2017/2018) making a total of 30% over the 2 years.

19. According to the Central Planning and Monitoring Unit, such an increase would raise the wage bill by Kshs 13,000,000/- cumulatively.

20. The Respondent did not make any counteroffer on general wage increment.

21. The Central Planning and Monitoring Unit after examining the variables enumerated hereinbefore recommended a general wage increase of 6% during the first year, and 5% during the second year making a total increment of 11%.

22. The Court finds no reason to find the recommendation arbitrary or so unreasonable that it would cause the Respondent to close shop.

23. The Respondent also did not demonstrate in its submissions that it would not be able to absorb such an increase.

24. The Court will, therefore, adopt the recommendation by the Central Planning and Monitoring Unit.

#### **Housing**

25. The first obligation upon an employer pursuant to section 31 of the Employment Act, 2007 is to provide housing accommodation and in default to pay an allowance to cover rent.

26. The Union demanded a house allowance increment of 15% during the first year and another 15% during the second year. The Respondent made no counteroffer.

27. The Central Planning and Monitoring Unit recommended a 5.5% increase of the *deconsolidated* wage over the entire tenure of the Collective Agreement.

28. The Court will adopt the recommendation and allow 5.5% house allowance increment to cover the 2 years.

### **Leave travelling allowance**

29. On account of leave travelling allowance, the Union had proposed an increase of 5.4% and 5.71% for each year respectively (Kshs 6,704/- and Kshs 7,096/-) over the Kshs 5,830/- which had been provided for in the lapsed collective agreement.

30. The Respondent did not make a counteroffer.

31. The Central Planning and Monitoring Unit after analysing the real value of the existing rate recommended an increase to Kshs 6,150/-.

32. The Court has no reason not to adopt the recommendation.

### **Redundancy, baggage allowance, funeral grant, medical expenses, acting allowance, heavy-duty allowance, disturbance allowance, commuter allowance**

33. The Central Planning and Monitoring Unit did not make any recommendations on these items, and the Court would order that they are maintained as provided for in the lapsed collective agreement between the Union and the Association the Respondent was a member previously.

### **The effective date of the Collective Agreement**

34. The last effective date of the Collective Agreement between the Union and the Association of which the Respondent was a member lapsed on 30 June 2016.

35. In keeping with practice and custom, the Collective Agreements should be effective 1 July 2016 to 30 June 2018.

### **Conclusion and Orders**

36. From the foregoing, the Court orders the parties to execute a Collective Agreement forthwith incorporating the following

(a) General wage increment

(i) 6% 2016/2017

(ii) 5% 2017/2018

(b) Housing

(i) 5.5% increase 2016/2018

(c) Leave travelling allowance

(i) Kshs 6,150/- 2016/2018

37. The other terms to remain as provided for in the Collective Agreement which expired on 30 June 2016.

38. The Collective Agreement to be effective 1 July 2016 to 30 June 2018 any arrears of the awards herein to be paid within 60 days, failure to which the arrears to attract interest at Court rates (from lapse of 60 days).

39. No order on costs due to anticipated and on-going social partnership between the parties.

**Dated, signed and delivered through email in Nairobi on this 24<sup>th</sup> day of April 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Mr. Ondiege, Industrial Relations Officer

For Respondent Mr. Atika holding brief for Mr. Muhindi instructed by O & Law LLP Advocates

Court Assistant Judy Maina