



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 276 OF 2016

(Before Hon. Justice Mathews N. Nduma)

KENYA CHEMICAL AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

SPECTRE INTERNATIONAL LIMITEDRESPONDENT

J U D G M E N T

1. The issue in dispute between the parties is conclusion of a Collective Bargaining Agreement (CBA) upon expiry of the outgoing one for the period 1st December 2011 to 30th November, 2013. This suit was filed on 20th September, 2016. The only issue tabled for negotiations by the union is general wage increment at 18 % per year for two years making a total of 36% for the two year duration of the Agreement.
2. The Claimant submits that the court should award subsequent Collective Bargaining Agreements to cover two year periods up to 30th November 2019, a period of six (6) years.
3. The Claimant submits that it gave the required 3 months' notice to the Respondent to convene negotiations. The Respondent acknowledged receipt of the proposal but no response was made to the union hence a dispute was reported to the Ministry of Labour on 23rd December, 2015. A conciliator Mr. L. K. Bii was appointed. On 21st March, 2016, claimant submitted the memorandum to the conciliator. Meeting was convened on 23rd March, 2016. Several meetings were held and parties failed to agree and the Conciliator made a report on 5th July, 2016 indicating that the company made an offer of 4% for the 1st year and 4% for the 2nd year due to its weak financial status. This was against the 18 % for 1st year and 18% for 2nd year demanded by the union. Report covered only 2013 – 2015 period. Report notes that the company faced financial dire straights but the workers also needed to be compensated for eroded income by inflation. The conciliator recommended 5% increase for 1st year and 5% increase for 2nd year. The workers rejected the recommendation by the conciliator hence the suit.
4. In the memorandum of defence filed on 28th March, 2017 Respondent explains that the factory closed as from October 2016 due to shortage of molasses, the main raw material used by the factory. That overseas parties had withdrawn their support for the factory aggravating the financial position of the factory. That notwithstanding the company decided to make a counter proposal on 8th September, 2015.
5. The Respondent supports the recommendation by the conciliation of 10 % increment for both years effective from the date of signing of Collective Bargaining Agreement due to the financial constraints faced by the company. The company had also closed from October 2013 and opened at a minimum scale in May 2014. Company closed again in October 2016 to date awaiting shareholders to raise capital to maintain the factory and money for operations.
6. It is the Respondent's position that the court grant the 10% increment for the two year period effective from the date of signing the Collective Bargaining Agreement since the company lacked capacity to pay arrears.
7. Central planning and monitoring unit (CPMU) of the Ministry of Labour filed an economic report on 16th July, 2018 in which it states that on 9th May 2018, when officers of CPMU made an impromptu visit to the factory there were no operations going on and for a long time. Only a skeleton of management staff were present. The CPMU was unable to get information to make proper analysis of the Respondent's financial status and labour trends. Contracted workers stand at 103 in 2011; and 2012; 104 in 2013, 109 in 2014; 98 in 2015, 94 in 2016 and 88 in 2017. The company had salary arrears of 10 months at the time amounting to 16 million and other statutory payments in excess of Kshs.90 million. The company was also not remitting monies owed by its employees of loans taken from various commercial banks though it had been deducted the same from their paid salaries.
8. In the final analysis, the court minded by the recommendations by the conciliator, the CPMU and the submissions by the parties enters

judgment in favour of the Claimant as against the Respondent as follows:-

a. General Wage Increment is awarded to the employees at 8% for the first year and 8% for the second year making a total of 16%. The effective date of the Collective Bargaining Agreement is January, 2017 to December 2018.

Judgment Dated, Signed and delivered this 24TH day of January, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Enock Ondiek for the Claimant

Mr. Ouma for Respondent

Chrispo – Court Clerk