



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 168 OF 2014

(Before Hon. Lady Justice Hellen S. Wasilwa on 22nd January 2019)

TAILORS AND TEXTILEWORKERS UNION..... CLAIMANT/APPLICANT

VERSUS

GLOBAL APPARELS (EPZ) LIMITED.....RESPONDENT

RULING

1. The Application before this Court is a Notice of Motion filed on 18th June 2018, under Certificate of Urgency, seeking the following orders:-

a. THAT the instant application be certified as urgent to be heard ex-parte in the first instance.

b. THAT this honourable Court be pleased to review and/or vary the Judgment made by Hon. Justice Wasilwa on 27th February 2018 by correcting the Order relating to the effective date of the Court orders touching on the wage increase as awarded by the court or by making an appropriate order in respect thereof to fit within the effective date of the parties Collective Bargaining Agreement.

c. THAT costs of the Application be provided for.

2. The Application is supported by the Affidavit of J.A. Guserwa and based on the following grounds:-

1. THAT in the Judgment delivered on 27th February 2018 in favour of the Claimant awarded a wage increase of 5% p.a with effect from the date of Judgment.

2. THAT the Claimant was directed to have the increment incorporated in the existing parties Collective Bargaining Agreement within 30 days of the Judgment which has not been done to date.

3. THAT the learned Judge only failed to recognise and/or appreciate the fact that the increment was to be effective within the effective clause of the parties Collective Bargaining Agreement.

4. THAT it is therefore in the interest of justice that the Judgment or order made on 27th of February 2018 be reviewed to take into account the above material facts which were not put into consideration and award the Claimant the appropriate effective date of the Collective Bargaining Agreement.

3. The Respondent filed its Replying Affidavit sworn by Mary Bonyo on 28th July 2018. She avers that the Judgment delivered by the Court on 28th February 2018 awarded the 5% wage increment effective the date of signing the CBA, within 30 days of the Judgment. She avers that the plain reading of the Judgment discloses that the effective date of the increment was within 30 days of the Judgment and there is therefore no apparent error on the face of the record to warrant any review of the Judgment.

4. She further avers that the Applicant seeks to mislead the Court as the effective date of the CBA was an issue in dispute and the Court rendered its decision on the matter. Further, that no evidence was tendered before the Court to demonstrate the Respondent's non-compliance, which non-compliance ought to be a subject in contempt proceedings. The Respondent therefore prays that the Application be dismissed.

Applicant's Submissions

5. The Applicant submitted that the Court failed to recognise the fact that the wage increment was to be effective within the effective clause of the parties' CBA. The Applicant submitted that paragraph 36 of the CBA provides for the agreement remaining in force until an amendment is finalised and registered. It relied on the Section 59 of the Labour Relations Court, which provides the effect of Collective Agreements and submitted that the CBA binds the parties. The Applicant relied on the case of **Linus Mukalo Shisanya v Wells Fargo Limited** where the Court allowed the application for review and corrected the Judgment in terms of the amount awarded.

Respondent's Submissions

6. The Respondent submitted that Rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016 sets out the instances for review and the reasons advanced in this Application does not meet the threshold for the grant of the review.

7. The Respondent further submitted that the effective date for the wage increment was determined and hence should the Applicant be aggrieved it ought to have appealed the decision. The Respondent relied on the Court of Appeal decision in **National Bank of Kenya Limited v Ndungu Njau [1997] Eklr** where the Court of Appeal dismissed the appeal against the High Court's Order, which declined to review its Judgment.

8. I have examined the averments of the Parties. I note that the Applicants want this Court to review its judgement by correcting the effective date of the Court order on wage increase to fit in the effect date of the CBA. The parties executing CBA was to expire on 30/9/2005 and was to remain in force till reviewed or renewed which was never done.

9. It is on this basis that the Applicants want the same increment to be reviewed from 2005 to date. This will translate in salary arrears of 5% p.a from 2005 to 2018, a period of 13 years which will result in a pay rise of 65%.

10. In considering the effective date of the wage increase as at the date of this judgement sought to be reviewed, I considered the report from the CPMU dated 24.10.2016 which show a general increase in the wage bill from 84.8 million in 2012 to 154.3 million in 2015 which is attributed to the corresponding rise in the number of staff and revision of the General Order during the period.

11. Base on the above, I concluded that there had been some wage increments over time and therefore it would be an injustice to backdate the 5% increment to 2005 as this will result in the Claimant Union Members earning a double increment.

12. In any case, backdating the effective time for the wage increment is an entirely new item, which does not relate to any error on the record or any new or material evidence, which was not in the Court's possession at the time of making this judgement and is therefore not an issue for review.

13. In my view, the orders being sought by the Applicants fall within the purview of appeal and is not within my powers to review it. In the circumstances, I decline to review the orders granted by this Court and leave the judgment undisturbed. There will be no orders of costs.

Dated and delivered in open Court this 22nd day of January, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Museve for Claimant – Present

Bonyo for Respondent – Present