REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.404 OF 2014

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS AND ALLIED WORKERS (KUDHEIHA).....CLAIMANT

VERSUS

BOM MJI MAZURI GIRLS SCHOOL.....RESPONDENT

JUDGEMENT

Issues in dispute

(a) Unlawful reduction of house allowance and removal of medical allowance;

(b) Underpayment of salaries; and

(c) Refusal to sign recognition agreement.

The claimant is a registered trade union and the respondent is a public education institution. The parties have a recognition and collective bargaining agreements.

The claim is that the respondent removed and terminated the payment of medical allowance to the claimant members and reduced the house allowance from Ksh.3, 000.00 to Ksh.2, 647.00 in the year 2013. The respondent has also refused to sign a recognition agreement with the claimant and refused to pay wages as provided under the DPM circular of July, 2012. Such is in violation of article 41 of the constitution, section 31 and 34 of the Employment Act, 2007.

The claimant is seeking that the respondent be ordered to pay all the money deducted from house allowance by a reduction, to commence the payment of the medical allowances and such payment be paid with interest and costs. The claimant is also seeking the payment of wages in accordance with the DPM circular of 2012.

The claimant is also seeking recognition by the respondent.

In evidence the claimant called Phillip Kiget, branch secretary Nakuru and testified that the parties signed a recognition agreement on 2nd March, 2016 but two issues have not been resolved being the payment of arrears in house allowances and underpayments since 2014.

The defence is that the recognition and collective agreements referred to by the claimant they were not party to but the Ministry of Education. The respondent reduced the house allowance of the staff by 15% but increased the gross salary by 26% which is way past the recommended amount by the Ministry of Education from April, 2008 circular and payment schedules.

The defence is also that the respondent houses the employees and members of the claimant and who pay a monthly rent of Ksh.400.00. the allocated staff quarters are situated within the school premises and the rent paid is reasonable for the area.

The demands made by the respondent are not justified, the recognition agreement relied upon relates to the period the Ministry of Education was paying the non-teaching staff which has since stopped. The DPM circular of 2012 is not a proper yardstick to measure salaries of the respondent employees since the same only applied to civil servants and not to subordinate staff under remuneration of B.O.M. regulation.

In evidence the respondent called George Githu a member of the board of management and testified that the board sat and in planning noted there was overstaffing and reduced subordinate employees from 21 to 17 and a recognition agreement has since been signed with the claimant. A scheme of service has since been prepared and which address the payment of wages and benefits taking effect 1st January, 2017

and all employees had to sign in acceptance. From 31st July, 2017 the respondent adjusted all the salaries and reinstated the house and medical allowances. The claimant wanted payments based on the DPM circular of 2012 which was not possible as the respondent being managed based on the collective fees from government and parents had to budget and ensure availability of funds before making a commitment.

The claimant is seeking recognition by the respondent. under the introductory paragraph in the Memorandum of Claim, the basis of the claim against the respondent by the claimant is set out as;

> *1.4 THAT the claimant and the respondent operate within a duly singed Recognition and collective Bargaining Agreement between the Ministry of Education marked as appendix 1.*

The claim is therefore filed by the claimant and not its members as there exists recognition and a collective agreement. Both parties have attached these agreements. To thus claim for recognition as herein is to negate the very essence of the claim as filed. This is a misnomer.

Even where the parties have now signed a recognition agreement as at 2nd March, 2016 the above put into account, the claim as filed had no basis. With the claimant recognised under the framework within which the respondent is founded upon, to seek direct recognition is just an emphasis.

Under the Basic Education Act under which the respondent is founded upon, the Board of Managements has the power to employ its own employees and regulate the payable wages subject to adherence to the basic wage regulations and guidelines. The requirement by the claimant to have their members in the employment of the respondent to be paid in accordance with the DPM circular of 2012 is not premised on any law, agreement with the claimant, employment contracts or wage orders. The basis for such a claim is foundationally lost.

On the claim for underpayment of house allowances and medical allowances terminated, the evidence that the claimant had its members in the employment of the respondent accommodated by the respondent in the staff quarters is not challenged. With such accommodation, the claimant had its members charged rent at ksh.400.00 per month. This evidence standing as it is, the respondent is in compliance with section 31 of the Employment Act, 2007 and further payment of Ksh.400.00 in rent is a negligible amount weighed under the Wage regulations for any part of the country.

The requirement in law is for the employer to provide housing to the employee. With that basic right addressed, whatever is charged as rent upon the provisions of such housing is to be upon agreement between the parties as the employer has met the minimum requirement contemplated in law as held in **James Korinyang' Lokwang' versus KALRO Cause No.447 of 2016.**

On the claim for reduced medical allowances, the provision in law in this regard is to have all employees registered under the NHIF or for medical scheme agreed upon in an agreement, private treaty or under the employer policy. Provision of a medical allowance unless premised on such agreement and the employer secures the same by provisions of an allowance is a benefit at the discretion of the employer. There is no evidence that the respondent failed to meet the minimum by failure to register the claimant members with the NHIF.

The benefit in medical allowance therefore reduced by the employer is purely discretionally.

Accordingly, the claims made are found without any merit, foundation or lawful and are hereby dismissed. As noted by the respondent, with recognition now in place, terms and conditions of employment for the future can now be negotiated and agreed upon. Each party shall bear own costs.

Delivered at Nakuru this 7th day of March, 2019.

M. MBARU

JUDGE

In the presence of: ……