



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 258 OF 2018

(Before Hon. Justice Mathews N. Nduma)

KENYA UNION OF SUGAR PLANTATION

AND ALLIED WORKERS.....2ND CLAIMANT

VERSUS

WEST KENYA SUGAR COMPANY LIMITED.....RESPONDENT

RULING

1. The agreement by the parties dated 28th August 2018 was adopted as an order of the court on 20th September, 2018. The agreement contained salary increment for workers and the agreement effectively settled the dispute in cause No. 258 of 2018 out of court.
2. The Notice of Motion application to enforce that agreement by holding the 2nd respondent, the Chief Financial Officer West Kenya Sugar Company in contempt of court and send him to imprisonment for a period of up to six months was filed on 29th October 2018 alleging that the respondents have failed to implement the consent order entered into on 20th September 2018 fully. That the agreed terms were only applied to permanent employees but not to employees on fixed term contracts and casuals who were left out.
3. The agreement specifically named category of workers whose salaries were increased to include:
 - (i) Operative UG1 – UG7- 13%
 - (ii) Clerical UG01-UG03- 12%
 - (iii) Operative UG8-UG13- 12%
 - (iv) Clerical UG04-UG08- 12%
4. Subsequently Collective Bargaining Agreement between the parties was registered by Hon. Maureen Onyango on 14th February 2019 as CBA No. 258 of 2018.
5. The application to enforce the salary increments was brought prematurely on 29th October 2018.
6. The court is satisfied that as at that time, the CBA having not been registered in terms of the provisions of Labour Relations Act, the applicants had no basis of bringing this application.
7. Furthermore, once the CBA was registered on 14th February 2019, the agreed terms became part and parcel of the terms and condition of service of all covered employees and same were deemed to be incorporated in their individual contracts of employment.
8. If there is ambiguity as to the category of workers to whom the salary increase applied, it is up to the applicant to move court for interpretation but not to cite the employer for contempt of court.
9. The application is an abuse of court process, lacks merit and is dismissed with costs.

Ruling Dated, Signed and delivered this 18th day of July, 2019.

Mathews N. Nduma

Judge

Appearances

F.K.E for Respondent

P.D Onyango for Claimant

Chrispo – Court Clerk