



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 186 OF 2016

BETWEEN

UNION OF NATIONAL RESEARCH INSTITUTE STAFF OF KENYA [UNIRISK]CLAIMANT

VERSUS

KENYA MARINE AND FISHERIES RESEARCH INSTITUTE [KMFRI].....RESPONDENT

Rika J.

Court Assistant: Benjamin Kombe

Zachariah Achacha, Secretary-General for the Claimant Union

Kadima & Company Advocates for the Respondent

FINAL JUDGMENT

1. On 22nd March 2019, the Court gave an interim Judgment consisting the following Orders:-

- a. The Respondent is granted 90 days from the date of this Judgment to seek the advice of the SRC in writing.
- b. A copy of this Judgment, the CPMU Report and Closing Submissions of both Parties, shall be forwarded to the SRC by the Respondent.
- c. The Court shall review the dispute at the end of the 90 days and give a final determination of the contested items, with or without the input of the SRC.

2. 90 days lapsed and nothing was received by the Court from the Respondent, indicating receipt of written advice, from the SRC. The Claimant has moved the Court to give a final determination.

3. The issues in dispute are:-

- a. General Wage Increase.
- b. Basic Salary
- c. Leave Allowance
- d. Commuter Allowance

e. Effective Date

4. Parties disagreed on those collective bargaining subjects, during their negotiation for the CBA covering 1st July 2014 to 30th June 2016.
5. The Central Planning & Monitoring Unit filed report on the contested issues in Court, on 30th June 2017.
6. It is observed that the number of Unionisable Employees rose from 478 in Financial year 2013/2014 to 772 in Financial Year 2015/2016.
7. The Annual Wage Bill for Unionisable Employees rose from Kshs. 101 million in 2013/2014 to Kshs. 245 million in 2015/2016.
8. The Respondent's Annual Revenue was Kshs. 1.21 billion in 2013/2014, and rose to Kshs. 2.05 billion in 2015/2016.
9. The net surplus was Kshs. 44.5 million in 2013/2014, and Kshs. 343.1 million, in 2014/2015. CPMU concluded that the Respondent's financial performance over the period under review was healthy.
10. Consumer Price Index over a period of 4 years, from July 2010 to June 2014 was 41.5% or 10.4% per year.

A. GENERAL WAGE INCREASE:

11. The Claimant demands general wage increase of 120%, spread over a period of 4 years. This amounts to 30% for each year.
12. There was no counter-offer from the Respondent, on the ground that the Respondent failed, despite having made several attempts, to obtain the advice of the SRC.
13. If the demand of the Claimant is allowed, it would result in an additional wage bill of Kshs. 456 million over a period of 4 years.
14. If the Court adopts general wage increase based on CPI of 41.5%, the total additional wage bill would be Kshs. 119 million for the whole period of the CBA.
15. **The Court adopts the CPI rate of 41.5%, (at 10.4% p.a) general wage increase spread over 4 years.**

B. BASIC SALARY

16. CPMU confirmed that the Respondent is classified together with other Research Institutes as PC 4B.
17. The current lowest salary for Unionisable Employees, is Kshs. 9,660 (RI – 1 entry point). This is below the minimum wage under the General (Amendment) Order 2015 for unskilled workers in the cities, which stood at Kshs. 10,954 in 2015 and by the Order of 2017, at Kshs. 12,926.
18. The Court agrees Respondent's pay structure needs to be adjusted to meet the current statutory minimum wage rates.
19. There is no adequate evidence however, placed before the Court by the Claimant, to enable the Court understand clearly, the minimum and maximum salary demands, for various job grades. What are the figures claimed based on? If the current minimum salary paid by the Respondent is Kshs.9,660, what economic data supports Claimant's demand for adjustment to a minimum salary of Kshs. 19,320? What support is there for the other adjustments demanded from R1-2 to R-14? The Court has not been provided with an economic analysis by the Claimant, justifying the adjustments. The Court should not be invited to engage in a tinkering exercise, endorsing numbers which appear to have been plucked out of the thin air, to craft a new pay structure at the Respondent.
20. The only order on basic salary the Court can make, based on the material before it, is that the **Respondent shall adjust its pay structure in order to meet the current statutory minimum wage rates, as stated in the current General (Amendment) Order.**

C. LEAVE TRAVELING ALLOWANCE

21. The Respondent pays a flat rate of Leave Traveling Allowance, at Kshs. 4000. The Claimant demands a minimum of Kshs. 6,000 for RI – 1 to RI – 7, and a maximum of Kshs. 14,000 for RI 13 and RI – 14.
22. The CPMU confirmed that Employees come from, and travel to different corners of the country while on leave. One traveling from Mombasa to Busia may spend more than Kshs. 4,000.
23. **The Court grants Leave Traveling Allowance across the board, from RI-1 to RI -14, at Kshs. 6,500.**

D. COMMUTER ALLOWANCE

24. CPMU observes that Employees in lower Job Grades received less favourable Commuter Allowance, in comparison to those holding higher Grades.

25. Current CBA Commuter Allowance, ranges from Kshs. 3,000 monthly for Job Grade RI – 1 to 4 to Kshs. 20,000 for RI – 15.

26. The Court awards Commuter Allowance as follows:-

- a. RI – 1 to 4 – Kshs. 4,000
- b. RI – 5 to 7 – Kshs. 5,000
- c. RI – 8 – Kshs. 6,000
- d. RI – 9 – Kshs. 7,000
- e. RI – 10 to 11 – Kshs. 9,000
- f. RI – 12 – Kshs. 13,000
- g. RI – 13 – Kshs. 15,000
- h. RI – 14 – Kshs. 17,000

27. The Claimant Union is authorized by the Recognition Agreement it executed with the Respondent, to represent Employees in Job Grade RI – 14. It therefore has no business making demands touching on RI – 15.

E. EFFECTIVE DATE

28. The effective date naturally should be 1st July 2014. This Judgment shall cover the period of the CBA cycle commencing 1st July 2014, ending 30th June 2018.

29. It is noted that the 2 year CBA cycle meant to cover the period 1st July 2014 to 30th June 2016, has since been overtaken by change in the law.

30. The Judgment herein shall therefore be satisfied in arrears.

IN SUM, IT IS ORDERED:-

- a. **Final Judgment is entered in favor of the Claimant.**
- b. **General Wage Increase is allowed at the CPI rate of 41.5%, (at 10.4 % per annum), spread over 4 years.**
- c. **The Respondent shall adjust its salary structure in order to meet the current statutory minimum wage rates, as stated in the General (Amendment) Order.**
- d. **Leave Traveling Allowance is granted across the board from RI – 1 to RI -14 at Kshs. 6,500.**
- e. **Commuter Allowance is awarded as detailed at paragraph 26(a) to (h) of this Judgment.**
- f. **The effective date shall be 1st July 2014, ending 30th June 2018, with the Judgment herein to be satisfied in full, in arrears.**
- g. **No order on the costs.**

Dated and delivered at Mombasa this 13th day of December 2019.

James Rika

Judge