



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 27th February 2018)

TAILORS AND TEXTILE

WORKERS UNION..... CLAIMANT

VERSUS

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

JUDGMENT

1. The Claimant filed Suit on 12th February 2014 seeking General Wage increment and effective date and duration of the Collective Bargaining Agreement whereby the Collective Bargaining Agreement in dispute was to cover 2005/2007 period but the Claimant/Union had and in the spirit of give and take frozen the same to 1st April 2013 Collective Bargaining Agreement as per the proposal. **(See APP1B and 1C (more than eight (8) down the line due Court case in cause No. 106 of 2006 and cause No. 43 of 2008).**

2. The Claimants submits that proposals were sent to the management in preparation for the negotiation and review of parties Collective Bargaining Agreement (CBA) on 5th September 2012 but they refused to give their counter proposals (APP1B).

3. They also aver that the Union's attempt to negotiate and review the above document failed because of the management's intransigence and un-co-operation in this review process by locking out union officials from the factory and failing to attend Collective Bargaining Agreement negotiations meeting as scheduled. **See APP3 and 3B**, which prompted the Union to lodge a Trade Dispute with Ministry of Labour and Social Security Service (**APP4**).

4. A Conciliator was appointed in the name of Ms. Hellen Apiyo **APP5** and parties managed to agree on thirty-five (35) clauses and disagreed on the two (2) clauses herein namely:

- **General Wage Increment;**
- **Effective Date.**

5. The Claimants submitted that the efforts by the Conciliator towards reconciling parties to reach an amicable settlement in terms of reviewing the two (2) clauses in dispute failed when the Management blatantly remained adamant and obstinate, making this matter to be referred to Industrial Court for arbitration (**APP8**).

6. They submit that the Respondent has never voluntarily and completely negotiated and reviewed a Collective Bargaining Agreement (CBA) at shop floor level or at conciliatory stage (labour office). **(See Ruling in cause No. 106 of 2006 and High Court Petition No. 43 of 2008) – APP 9 & 10.**

7. The Claimant submitted that reviews were done through the Industrial Court of Kenya, the last one being an award in Cause No. 106 of 2006, delivered on 16th November 2007 by Hon. Justice Isaac E. K Mukunya reviewing 2003/2005 CBA to 2005/2007 CBA which they appealed in High Court under High Court Petition No. 43 of 2008, the award was gazetted in the Kenya Gazette published by Authority of the Republic of Kenya dated 14th December 2007 Volume CIX-NO. 95 making the Award and the resultant CBA 2005/2007 binding on parties (**APP 11**).

8. In the said Award at page 7-3rd paragraph, the Court ordered the Respondent to:-

“be engaged in the negotiations of Collective Bargaining Agreement (CBA) for the current period from 1st October 2007 up to 30th September, 2009. It is therefore the decision of this Court to decline to award on those terms and hereby directs the parties to proceed to negotiate the Collective Bargaining Agreement within the next (60) days to enable workers to benefit. The argument that the employer is unable to meet such demands due to poor financial performance or any other reason is without merit because no employer needs to employ workers, which it cannot pay. There are other options”.

9. The Respondent adamantly and deliberately ignored the Court order and refused to negotiate fully but instead maliciously dismissed the beneficiaries of the Award and employed new ones. These disputes are in Court as Causes Nos. 65,66,67 and 68 of 2008. (**APP 11**). The Claimants wants this Court to consider this as contemptuous and punish the Respondents accordingly.

10. The Respondents negotiated the previous Collective Bargaining Agreement under **Export Processing Zones (EPZ)** Apparels Manufacturers and Exporters Group of F.K.E (Global, Protex, Rolex, MRC, Alltex and Rising Sun), the group has currently dis-integrated, where Alltex EPZ Limited has negotiated and reviewed their own Collective Bargaining Agreement with better terms (**APP 12**). Those reconciliation Agreements were signed individually by members of the group and the union.

11. The Claimants have averred that the MRC, Raising Sun and Mirage closed down and the Directors run away from the country without paying workers their terminal benefits including arrears arising from 2005/2007 collective Bargaining Agreement in Cause No. 106 of 2006.

12. The Applicants now seeks orders from this Honourable Court to **order** the Respondents to deposit security bond of **Kshs, Eight Million (8,000,000)** with the Court to protect the workers who are the beneficiaries of this Court proceedings and resultants award from loosing their benefits and arrears due to dismissal and closures followed by quick departure of Directors from the country as is the case of MRC and raising Sun (Cause No. 76 of 2006) (**APP 13**).

13. They also submit that during the period under review, the trend of inflation in the country has gone up and the Court is asked to consider the above when awarding in line with the Union demand of 10% above the Government General Wages Order of each year.

14. The employees herein fall under low-income group wage group and as such are entitled to 10% increment of inflation and CPI as per the national wages guidelines in addition to productivity (90 %), GDP (60 %) as stipulated in Section 15(5) of the Industrial Court Act No. 20 of 2011.

15. The Claimant avers that in view of the long period (of 11 years) the employees have tolerated the static-wages, despite of the hard economic-times they have endured, it is their sincere considered opinion and prayer to the Court to favorably consider their prayer of a wages-increment of ten (10) percent of the wage above the Government Wages Order of each year for the first year and 10% for the 2nd year.

16. The Claimant also avers that Collective Bargaining Agreement (CBA) arrears be paid within thirty (30) days from the date of Judgement and an interest of 16% per annum on both cost and arrears.

17. The Respondent stated that the last CBA negotiation with the Union was when the Respondent was part of the EPZ Apparel Manufacturers and Exporters Group of the Federation of Kenya Employers (F.K.E) and was in effect up to 30th September 2005. APPX 1 is a copy of that Collective Bargaining Agreement (CBA).

18. The EPZ Apparel Manufacturers and Exporters Group of the F.K.E disintegrated owing to the fact that some members closed down whilst others wound up and as such a Collective Bargaining Agreement (CBA) could not be negotiated then. Some previous members such as the Respondent do however remain in operation.

19. The Respondent states that the Collective Bargaining Agreement (CBA) negotiations in 2008 were thwarted by the electioneering in the run-up to the election and the Post-Election Violence. Further the Union was wracked by internal wrangles over its leadership and various Court cases resulting in confusion as to office bearers who would conduct any such negotiations even as late as 28th June 2012. The Respondent did not call for freeze in negotiations as alleged by the Union but the same was necessitated by circumstances. **Appx. 2** as a bundle are copies of correspondence from the Union and the Ministry of Labour over this dispute.

20. In September 2012, the Respondent readily undertook negotiations with the Union on a proposed CBA. During these negotiations, the Union convened meetings which were not convenient to the Respondent's concerned managers and consequently, meetings scheduled for 20th September 2012, 5th September 2012 and 24th January 2013 aborted.

21. Despite communications via telephone to have a mutually convenient meeting convened, the Claimants instead opted to report a dispute to the Minister before exhausting this avenue which led to the appointment of a conciliator and the Respondent attended all meetings before the conciliator on 14/08/2013, 11/08/2013 and 20/09/2013 and even submitted its proposals to the conciliator (**Appx. 4**).

22. The Respondent claims that Management attempted under the guidance of the Conciliator to amicably settle the dispute resulting in an agreement on 33 clauses of the CBA except 2 namely:

- **General Wage increment** and
- **The effective Date of the CBA**

23. The Respondent avers that court intervention was sought owing to the unrealistic demands advanced by the union.

24. The Respondents states that the claimant introduced extraneous issues which are not in contention in this proceedings in a bid to scuttle the real issues for determination. These issues include:

(i) The issue of contempt as raised at paragraph 16 is not an issue for determination by this Court.

(ii) Paragraph 17 of the claim is premised on an unsubstantiated claim of a huge profit and is mere speculation. No figures are even offered and urge the court to disregard the same.

(iii) Disintegration of the EPZ Group of F.K.E was necessitated by the fact that some members such as Mirage have since then closed shop.

(iv) The said EPZ companies are separate and distinct legal entities and the Respondent cannot be held liable for their perceived liabilities. The issue of a security bond does not therefore arise as alleged by the Claimant as the Respondent has no plans of shutting down.

25. The Respondent states that the Claimant has not indicated the source of its inflationary percentages at paragraph 24 of the claim to enable the Court place reliance on the same and therefore ask the Court to disregard the same.

26. In a dispute of this nature, Section 15 (5) of the Industrial Court Act (now repealed) which is synonymous to Section 15 (5) of the Employment and Labour Relations Act is designed to act as a guide and is not meant to suffice as the decision of the Court.

27. The Union by its claim proposed a 10% general wage increment for the 1st year and a similar increment for the 2nd year for effected employees who are still in employment but the Respondents proposes no increment as Respondent is facing various challenges in its operation which have led to severe dip in work volumes affecting its profits and creating a cash crunch. This has been attributed by issues such as:-

(i) As a CMP, the Respondent is strictly involved in cutting, measuring, stitching and packing of apparel. Its services are simply contracted by companies such as New Wide Garments Kenya, Royal Garment Industries, Africa Apparels, Protex Kenya, Alltex, Rising sun and Rolex Garments operating within the EPZ and it does not source directly for orders, which limits the income of the Respondent as compared to those of the contracting companies (Appx.6).

(ii) Increased competition from Asian countries such as China, India, Japan, Bangladesh and Malaysia who have been in the garment manufacturing industry for longer periods, who price their products lower and who have access to readily available raw materials unlike the Respondent who largely relies on imports that are often delayed leading to preference for the Asian suppliers.

(iii) Overhead costs are expensive such as electricity tariffs, labour costs are also high owing to lack of skilled manpower due to lack of necessary training in the local school curriculum. The effects of 2007/2008 Post Election violence were still being felt as the country was perceived as being politically unstable which led to some of the Respondent's contractors in the EPZ shutting down whilst others relocated to other counties like Ghana and Mozambique.

28. The Respondent avers that Directors' Reports and financial statements for the years 2011, 2012 indicating loss suffered are annexed as a bundle marked **Appx. 7**. The Respondents also states that all along has provided increments to its employees in line with the statutory minimum prevailing in any material year and it is untrue that their salaries and allowances have remained static as alleged by the Union.

29. The Respondent states that the Union's demand will bring the Respondent to its knees as the Respondent is financially incapable of meeting the increments as demanded and has all along been willing to offer incentives such as increment to its workers to motivate them save than to do so to the level demanded by the Union which is currently impossible owing to the financial position.

30. The Respondents avers that it does not seek to dispute tradition as practiced over the years as relates to clause and states that failure of negotiation has not been due to machinations of the Respondents and therefor prays this Honourable Court that the effective date of the Agreement be the date of delivery of the Award and that the Court also adopt its proposal and rejects those by the Union.

31. I have considered the submissions of both parties. I note that the parties have basically agreed to the Collective Bargaining Agreement save for the two clause which deal with general wages increment and the effective date of the CBA. Whereas the Claimants have submitted a 10% wage increment, the Respondent have made proposal of 0.5%.

32. The Respondent have proposed this low figure of 0.5% citing poor performance and economic downturns. They only filed their returns of 2011/2012 but none for the subsequent years.

33. From the report submitted by Central Planning and Monitoring Unit (CPMU), there is a general increase in number of unionisable staff during the period upto 2014 and then a decline in 2015. The labour cost for this period also increased during this period. There has also been an increase in the wage bill in the same period.

34. The report also shows what the implication on wage demand will be. Given the implications shown on Table 5 submitted by the Central Planning and Monitoring Unit (CPMU), I find a wage increment of 5% will be appropriate which I now award. The effective date will be upon the signing of the collective Bargaining Agreement (CBA) which should be within 30 days. In default the increment take effect within 30 days from the date of this judgement.

Dated and delivered in open Court this 27th day of February, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties