



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
NAKURU

PETITION NO.1 OF 2015

KENYA PETROLEUM OIL WORKERS UNION.....PETITIONER

VERSUS

KENYA PIPELINE COMPANY LIMITED.....1ST RESPONDENT

SALARIES AND REMUNERATION COMMISSION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

RULING

By judgement delivered on 29th January, 2016 the court directed the parties to;

- a) Register the Collective Bargaining Agreement (CBA) signed on 14th November, 2014;
- b) The respondent to compute the arrears out of the CBA and file with the court;
- c) Mention to confirm compliance and for taking further directions.

Following the Judgement, on 17th February, 2016 the 1st respondent filed with the court a letter with attached records settling out the payment of monies to employees with regard to the CBA for the period of 14th November, 2014 and covering three (3) instalments running each year of;

1st instalment from 1st July, 2013;

2nd instalment from 1st July, 2014; and

3rd instalment from 1st July, 2015.

Attached to the letter is 2nd respondent letter dated 24th October, 2014 giving a schedule and analysis and recombination for the adjustment of existing salaries at 20% and covering four (4) phases effective 1st July, 2013. The 2nd respondent also advises that all other remunerative and facilitative allowances should be retained at existing levels until there is finalisation of on-going study on allowances.

The attached letters and payment schedules of the 2nd respondent as noted above predated the date of judgement. The analysis of the 2nd respondent vide letter dated 24th October, 2014 and findings therein must therefore be seen in the context of the court findings under paragraph 84 of the judgement delivered on 29th January, 2016.

The computation of salary arrears due out of the registered CBA ought to have followed these findings.

Following judgement herein, the parties registered the CBA with the court on 18th March, 2016. As noted above, the 1st respondent following judgement submitted the 2nd respondent computations vide letter filed on 17th February, 2016.

In response, the petitioners filed written submissions on 22nd December, 2017 and there is the Affidavit of Francis Ng'ang'a filed on 30th

October, 2017. The essence of the submissions and affidavit is that the submissions made by the 1st respondent including the analysis of the 2nd respondent are erroneous by the application of a simple interest instead of a compound interest rate of 5% each year. The application of such simple formula means that the increment obtained in year one of the CBA is again applied in the subsequent years this being a constant increment. Where a compound interest is applied, the annual increments graduate upwards every years and this create a considerable difference to cater for inflation after every other year.

Every negotiated CBA must be taken into context. Parties in arriving at a negotiated CBA must address key policy questions of;

- (i) Minimum standard of living determined by the rise in cost of living index since the last wage increase or economic performance;
- (ii) The performance or productivity increase in the specific sub-sector over the period in question; and
- (iii) Ability of the employer to pay.

Therefore, as at the time of registration of each CBA, the above policy issues or questions must have been addressed. The agreed upon increment which then forms the new wage or salary is therefore determined based on the Consumer Perception Index (CPI) and spread over the period of the CBA. Such simple application of increment is meant to be spread to ensure equality on the CPI over the term until a new wage or salary is agreed upon.

Any new increment with a graduated salary must involve a new assessment and attribution to the CPI existing on the new term of the CBA as unlike application of a compound rate within an existing CBA term.

The rationale is that each CBA negotiations are meant to factor all policy questions, existing CPI and inflation. Such factors then can be reviewed on the grounds that there exists justifiable grounds and reasons to factor the rise in cost of living since the last wage or salary increase and based on economic performance and that the sub-sector performance or productivity increases are justified. Also, the tripartite must take into account the ability of the employer to pay.

In this case the respondents have applied the simple rate computation while the petitioners seek to apply the compound rate increments. Based on the court judgement and the applicable standards and practice of salary increments, such compound rate application is erroneous. The simple rate application should apply as set out in the analysis by the respondents.

Accordingly, noting the judgement of the court delivered on 29th January, 2016 the parties shall apply the simple interest of 5% each year for the CBA signed on 14th November, 2014 for its duration. Such computations have now been undertaken by the respondents by advice and letter filed with the court on 17th February, 2016.

Delivered in open court at Nakuru this 30th day of April, 2018.

M. MBARU JUDGE

In the presence of:

Court Assistant: Nancy Bor

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