



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

C. B. A NO. 161 OF 2017

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 27TH APRIL, 2018)

INTERPUBLIC UNIVERSITIES COUNCILS

CONSULTATIVE FORUM (IPUCCF).....CLAIMANT

-VERSUS-

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS AND HOSPITAL WORKERS.....RESPONDENT

RULING

1. Before the court is an objection dated 17th July 2017 brought by affidavit of Objection sworn by one Frank Esevwe on his behalf and on behalf of the 13 Objectors to objecting to the registration of the CBA dated 15th March 2017 between IPUCCF and KUDHEHIA for the following reasons:

- 1. The CBA violates the provisions of section 48 of the Labour Institutions Act No. 12 of 2007 (“the Act”) as well as the Regulation of wages (General) (Amendment) Order 2015 (“the General Wages Order 2015”) which apply to the said CBA;**
- 2. The violation of the Act and the General Wages Order is in the sense that the basic monthly salaries contained in the CBA are below the minimum wages prescribed by the General Wages Order 2015;**
- 3. The employees of the public universities, including the university of Nairobi, who are covered by the CBA, include drivers, artisans, cashiers and cleaners, which categories are covered by the General Wages Order 2015. Annexed and marked FE3 (i - iv) are sample employment contracts;**
- 4. Clause 8 of the CBA is unjustified in that it requires that pending union dues and agency be deducted from CBA arrears belonging to employees and yet the employees have always had the union dues and arrears deducted as per their payslips and as such any pending payments (if at all) should not be remitted from the arrears but by the employers to the union.**

2. The Objection is premised on the grounds that:

- a. As per Section 60 (6) of the Labour Relations Act No. 14 of 2007, the Court must not register a CBA that conflicts with any law of directive or guidelines on wages.**
- b. The Objector had written to the parties herein on several occasions raising our concern on the CBA, but the same had been ignored. Annexed and marked FE4 (i-iv) are true copies of the said correspondence.**

3. In their Replying Affidavit the Respondent avers that it is not true that the payment rates set out are below the statutory minimums given the period of the Agreement which has a retrospective effect and invites the Court to compare the applicable statutory requirements at any given time applicable to the Collective Bargaining Agreement. Further, they aver that the return to work formula that gave rise to the negotiations of the CBA at Clause 7 provided for the recovery of Union dues as required by Section 48 of the Labour Relations Act to those enjoying the Collective Bargaining Agreement but not paying Union dues monthly.

4. They further aver that the evaluation and input of the CPMU of the Ministry of Labour in relation to the validity of the Collective

Bargaining Agreement in issue is to be considered in so far as the Statutory minimums are concerned.

5. They urge the Court to find that the terms of the CBA intended for registration are compliant with the legal provisions touching on statutory minimums and the objections raised by the interested parties are baseless, and that the court should proceed to expeditiously overrule the objections and proceed to register the Collective Bargaining Agreement.

6. In their submissions, the Objector stated that the CPMU Report prepared by the CPMU fails to take into account the issues in despite having been raised by the Objectors. They submit that under paragraph 1.3 of section A of the CPMU Report, the report enumerates the issue in dispute as “Basic monthly salaries contained in the CBA are below the General Wages Order of 2015” making no reference to the CBA in its analysis of data under Section C of the report. Section C shows that the data analyzed in the preceding table was sourced from the management of the University of Nairobi which is a wrong analysis and which cannot sire a correct observation and/or recommendation.

7. The Objector aver that the CPMU strayed from its subject of observation by using strange data and coming to a parallel conclusion. It would be imprudent and unjust for this Court to rely on the observations made on the CPMU Report as it has failed to justify the CPMU’s lack of objection to the registration of the CBA and it does not dispel the Objector’s grievance that the wages in the CBA do not meet the legal threshold.

8. The Applicant Union, in their Submissions argued that when the Court referred the CBA to the Central Planning and Monitoring Unit under the Ministry of Labour Social Services for analysis to ascertain whether the terms were in compliance with the legal provisions as envisaged under the Country’s Labour laws, the Central planning and Monitoring Unit filed its report on the 6th of December 2017 confirming that the CBA as negotiated and signed was within the parameters of the basic minimum rates given the duration of the said CBA being 1st July 2013 to 31st June 2017.

9. They submit that the Objector’s objection to the registration should be overruled to pave way for the registration of the CBA whose implementation has stalled and the affected employees have been denied its timely benefits. They submit that the Objector lacks capacity to purport to represent the beneficiaries of the CBA and their interests. There is also no evidence of fraud and illegality as alleged by the Objectors and in light of the Provisions of Section 60 of the Labour Relations Act, the Court has no basis in law to stop or refuse to implement the registration of the CBA as intended.

10. In conclusion, the Applicant Unions believes that the Objector’s Objection seems to be informed by some differences within their aspirations to scuttle the Union leadership which matters should be left out of registration of a beneficial valid Collective Bargaining Agreement

11. I have examined all the submission s of the parties concerning the registration of this CBA. Under Section 60 of Labour Relations Act 2007, this Court has the jurisdiction to register a CBA. Section 60 (6) states that:-

6. The Industrial Court shall not register a collective agreement that:-

a. conflicts with this Act or any other law; or

b. does not comply with any directives or guidelines concerning wages, salary levels and other conditions of employment issued by the Minister.

12. Thus from Section 60(6) before this Court can allow registration of CBA in conflict, this Court should confirm that the CBA does not conflict with this Act or any other law or it does comply with directives or guidelines concerning wages, salary levels and other conditions of employment issued by the Minister.

13. In this respect, the Objectors have raised an objection to the registration of this CBA and the ground raised is that the CBA violates the provisions of Section 48 of the Labour Act No. 12 of 2007 and the Regulations of Wages (General Amendment) Order 2015. They pointed out that the Act and General Wages Order is being violated in the sense that the basic monthly salaries contained in the CBA are below the minimum wages prescribed by the General Wages Order 2015.

14. The General Wages Order 2015 referred to sets out the minimum wages for Cleaners, Drivers, Artisans and Cashiers as follows:-

- Drivers – medium sized net = 18,592.20/=
- Cashiers – 24,719/=
- Cleaners – 10,954.70/=
- Artisans III – 18,595-20/=
- Junior Clerk – 16,872.40/=

15. These are basic salaries excluding house allowance. The Objectors have pointed out that the CBA sought to be registered puts the salaries of these cadres below the General Wages Order 2015.

16. I have looked at the CBA, I note that the details of the salary paid under this category is not explicit. The report from CPMU fails to point out the wages payable under the proposed CBA vis a vis what is provided for in the Wages Order.

17. It will be uphill task for this Court to attempt to make that determination without the said data being at its disposal.

18. I therefore find that the registration of the CBA cannot be done until that information is given to the Court. I therefore direct that the data on salaries payable under the CBA be explicitly given to Court before further orders or registration or otherwise of the CBA.

19. Costs in the cause.

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

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Museve for Union and holding brief for Miss Kanyiri for IPCU – Present

Applicants – Absent