



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 458 OF 2016

KENYA HOTELS & ALLIED WORKERS UNION.....CLAIMANT

VS

MADA HOLDINGS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This action is brought by Kenya Hotels and Allied Workers Union against Mada Holdings Limited, the subject matter being failure to negotiate and conclude a Collective Bargaining Agreement (CBA).
2. The claim is contained in a Memorandum of Claim dated 21st March 2016. In its prayers, the Claimant asks that its proposed terms and conditions of service be adopted by the Court.
3. The matter first went to conciliation before W. Kimani who was appointed by the Chief Industrial Relations Officer by letter dated 17th September 2015. At the conciliation stage, the Claimant made its proposals upon which the Respondent made its counter proposals.
4. On 19th September 2016, Mr. Odera appearing for the Claimant Union, told the Court that parties were negotiating and on 3rd November 2016, Mr. Simiyu, also for the Union reported that the parties had agreed on 24 clauses of the CBA, leaving 20 clauses unresolved and therefore pending determination by the Court. The Claimant opted to dispense with the pending issues by way of written submissions.
5. The matter was put off severally to allow the Respondent the opportunity to file its pleadings and submissions but this did not happen. The matter finally came up for highlighting of submissions, before **Wasilwa J** on 27th January 2018, by which time I had left the Nairobi Station. From the record, it would appear that the Claimant abandoned its quest to highlight its submissions and instead asked for a judgment date. **Wasilwa J** directed that judgment would be on notice before me.
6. The reason for the Claimant's decision not to highlight its submissions was not disclosed in the court proceedings but by her letter dated 29th January 2018, the Principal Judge of the Employment and Labour Relations Court, **Maureen Onyango J**, forwarded the file to me to write a judgment.
7. In the absence of any substantive proceedings before the Court, this judgment is based on the Claimant's Memorandum of Claim and submissions as filed. By its Memorandum of Claim dated 21st March 2016, the Claimant seeks adoption of its proposed terms and conditions of service.
8. In its submissions dated 28th November 2016 and filed in court on 30th November 2016, the Claimant lists 19 contentious items, ranging from 'appointment' to 'salary entry point'. In the body of the submissions however, the Claimant only makes general statements of an aspirational nature. To my mind, these statements are not adequate to prosecute an economic dispute, such as this one. The Claimant was duty bound to present hard evidence in support of these statements.
9. In the absence of such evidence, the Court did not find any basis for any of the Claimant's proposals. The result is that the Claimant's claim fails and is dismissed with no order for costs.
10. It is so ordered.

DATED AND SIGNED AT MOMBASA THIS 5TH DAY OF APRIL 2018

LINNET NDOLO

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF APRIL, 2018

ONESMUS MAKAU

JUDGE

Appearance:

Mr. Simiyu for the Claimant

No appearance for the Respondent