



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 206 OF 2016**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA UNION OF SUGAR PLANTATION AND**

**ALLIED WORKERS.....CLAIMANT**

*VERSUS*

**KIBOS SUGAR AND ALLIED INDUSTRIES LIMITED...RESPONDENT**

**JUDGEMENT**

The parties hereto the Kenya Union of Sugar Plantation and Allied Workers on the one hand and Kibos Sugar and Allied Industries Limited have a valid Recognition Agreement. They were in the process of negotiating their first collective agreement when they reached a deadlock on the grading structure and basic minimum rates of pay.

Prayers (a) and (c) in the statement of claim have been dispensed with through interlocutory application and/or discussion and agreement between the parties herein. Only prayer (b) in the statement of claim remains for the determination of the court and the prayer for costs.

By directions issued by the court during the hearing of this cause, the court ordered that the Collective Bargaining Agreement (CBA) negotiated and signed by the parties herein be registered in court as by law stipulated. The same was duly registered and the certificate of registration from the court dated the 4<sup>th</sup> day of April 2017 confirming such registration is annexed to the claimant's submissions.

The CBA was however concluded without a grading structure attached to it. Parties herein have now filed their separate proposals on the nature of the grading structure that they intend to be incorporated in the CBA. Essentially, the court is now called upon to decide which of the two grading structures between the one proposed by the claimant and the one proposed by the respondent should be incorporated in the CBA or in the alternative to come up with a structure combining the proposals from both sides.

The issue for determination is therefore the grading structure to be annexed to the CBA that was registered on 4<sup>th</sup> April 2017 and the basic minimum wage attached to each grade.

The union proposed a total of 11 grades from UG 11 (lowest) to UG1 (the highest). The proposal was filed on 2<sup>nd</sup> March 2017. The respondent also proposed 11 grades from UG 11 to UG1. The difference between the two proposed grading structures is the cluster of jobs contained in each grade and the proposed minimum wage attached to grade.

**Union's Submissions**

The claimant submitted that the job grading structure filed in Court on the 2<sup>nd</sup> day of March 2017 reflects all the positions occupied by the employees and their pay slips which were attached.

The claimant submitted that the grading structure filed by the respondents on the 14<sup>th</sup> day of March 2017 is misleading as it lowers the employees' salaries and is done without the input of the claimants.

The claimant submitted that an employees' salary cannot be reduced particularly in the absence of any negotiations carried out between the employer and the employees or as may be agreed between the employer and the union from time to time.

It is submitted that the respondent's view that Kibos Sugar and Allied Industries is in bad shape/state and therefore cannot afford the salaries

that were negotiated is in bad taste, ill-conceived/misguided and against the spirit of negotiations. It is submitted that the issue of salary increment is not before the court and cannot be addressed as the same had already been negotiated and agreed upon during the CBA negotiations, and that the life of the current CBA ends on 1<sup>st</sup> August 2017 and the parties might find it very difficult to negotiate another CBA before the grading structure is put in place.

It is the claimant's wish that the court finds a lasting solution for the matter and accepts to adopt the proposed job grading structure filed on 2<sup>nd</sup> March 2017 by the claimant by the as it reflects the true picture of what is in place at Kibos Sugar and Allied Industries. The same is supported by the payroll of the company in regards to the unionisable employees.

The claimant is of the opinion that the respondent is not sincere and is trying to find all means and ways of scattering, delaying and/or completely refusing to implement the negotiated and registered CBA. It submits that the respondent is acting in bad faith and is out to frustrate the claimants.

### **Respondent's Submissions**

It is submitted that the structure posed by the respondent is in complete conformity with all the provisions of the CBA. Clause 39 (1) of the CBA reserves for the company the right to use the Government General Wages Order in determining the wages structure of its employees.

It is submitted that this is the benchmark that the respondent has used in its proposed structure. It is submitted that the structures proposed by the respondent is not only in conformity with the CBA between the parties and is also fair. To the contrary, the grading structure proposed by the claimant is not based on any perceptible provisions of the CBA. The figures proposed are not explained and their sources remain a mystery to the respondent.

It is submitted that the grading structure proposed by the respondent makes provisions for all cadre of employees working for the respondent while that proposed by the claimant leaves out certain employees and departments. For instance, the structure proposed by the claimant does not make provisions for employees working in the Agricultural Department, paper Mill and Distillery. These are all covered by the structures proposed by the respondent. This therefore means that were the court to adopt the structure proposed by the claimant, employees working in the above stated departments will not have their wage structures incorporated in the CBA. The consequences for this are dire. Indeed, it will be as if they are not part of the CBA at all.

It is submitted that under the claimant's proposals, provisions is made for designation under UG4, UG5 and UG6. These designations are mixed up and there is no way that they can be under the same grade. The court will note that the claimant has grouped together Inspectors, Attendants, Drivers and Operators. These employee groups are in different grades but are grouped together by the claimant making their proposal totally untenable.

The respondent further submits that currently the entire sugar industry in this country is operating under a very difficult climate. Sugarcane, the raw material that runs sugar companies such as the respondent herein is in acute short supply. Sugar companies are currently operating at a 65% due to reduction in raw material supply. The result has been reduced sugar sales and hence reduced revenue by millers in the country. Some millers have had to lay off workers to stay float. Others have closed completely.

It is submitted that the issue has been a subject of discussion between the respondent and the claimant herein and it is thus for this reason that the structure proposed by the respondent is reasonable. The respondent intends to try as much as possible to keep their operations going, even if the same is reduced in capacity. Also to attempt despite the harsh operating climate to keep all its employees. This calls for reasonableness in wages.

It is submitted that the proposed grading structure by the respondent scrupulously respects the current salary status and does not in any way reduce he same. There is need to take into account the prevailing climate within the sugar industry at present in determining employees' salaries. There is need to strike the delicate balance between reasonable wages for the employees and achieving sustainability for the whole sector.

### **Determination**

I have considered the proposed grading structure and the submissions in support thereof by both parties. I have noted that the respondent's structure is better structured and adopts the structure in the Regulation of Wages (General) Order while the proposal by the union is more fragmented with some grades mixing attendants, operators and general workers as is evident in the proposed grades UG10, UG9, UG7 and UG6.

Having considered both proposals, I find the proposals by the respondent to be reasonable and order that the parties adopt the structure proposed by the respondent with the following modifications.

- (i.) The position of Night Watchman to be slotted under UG9 while the position of Day Watchman be in UG10.
- (ii.) The rates in column 3 that is wages for 1<sup>st</sup> August 2015 will be retained for that year. The 4<sup>th</sup> column shall be rates effective 1<sup>st</sup> August 2016 and the 5<sup>th</sup> column shall be effective from 1<sup>st</sup> August 2017 to be consistent with clause 39 of the CBA. The parties shall thereafter negotiate new wages for the year beginning 1<sup>st</sup> August 2018.
- (iii.) The basic minimum rates of pay shall be applicable to new employees and employees whose wages are currently below the minimum rates as at the date of this award. Any employee whose wages are above the minimum rates of pay shall retain their wages but shall be entitled to a wage increase in accordance with clause 39 (c) of the CBA.

For the record, the prayers contained in the statement of claim under prayers (a), (b) and (c) are marked as settled.

Each party to bear its costs.

**DATED AND SIGNED AT NAIROBI ON THIS 13<sup>TH</sup> DAY OF APRIL 2018**

**MAUREEN ONYANGO**

**JUDGE**

**DATED AND DELIVERED AT KISUMU ON THIS 3<sup>RD</sup> DAY OF MAY 2018**

**MATHEWS NDERI NDUMA**

**JUDGE**