

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 316 OF 2018

KENYA QUARRY AND MINE WORKERS UNION.....CLAIMANT

- VERSUS -

TRANSFLEET LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th July, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 14.03.2018 through its National General Secretary Wafula Wa Musamia. The claimant prayed for orders as follows:

- a) The respondent to sign the negotiated agreement without any further delay.
- b) The respondent to pay workers arrears from the effective date which is 1st January 2016 as agreed between the union and the Human Resource Manager.
- c) The Respondent to pay union dues of the calculated arrears to the claimant.
- d) The respondent to pay costs of the suit.

There is no appearance or response filed for the respondent. The respondent was served to attend the mention for directions on hearing of the suit on 28.06.2018 but failed to attend. The claimant opted that the suit be determined on the basis of the pleadings and the documents on record. The claimant further prayed that the matter be fixed for judgment on 06.07.2018.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- a) The claimant prays that the respondent to sign the negotiated agreement without any further delay. The claimant's case is that on 25.05.2015 the parties signed the recognition agreement being exhibit 2. The parties subsequently negotiated the collective agreement and agreed that the effective date was to be 01.01.2016. The draft collective agreement is exhibited. The respondent is said to have failed to sign the agreement and reported the dispute to the cabinet secretary who appointed a conciliator per the letter dated 20.09.2016 and under section 65 of the Labour Relations Act, 2007. The appointment of the initial conciliator was revoked and another conciliator appointed as per the letter dated 01.12.2016. The conciliator invited parties to make their respective memorandum as per the letter dated 22.12.2016. The claimant made the memorandum dated 17.01.2017 explaining that the parties had negotiated in good faith and concluded the collective bargaining agreement but the respondent had not signed the same to facilitate its registration. The respondent failed to present a memorandum. The parties were invited to the conciliation meetings and the respondent's management failed to attend. Subsequently the respondent's human resource manager Lawrence Muga attended the meeting on 13.02.2017 and he stated that he was not mandated to commit the respondent. The conciliator then recommended thus, **"During the conciliation efforts, it was evident that the respondents in this matter have seriously frustrated the conciliation process and let down both the conciliator and the Union by failing to send a representative fully mandated to commit the organisation to decisions. Given this recalcitrance, I am now recommending that the Court take up the matter as unresolved dispute. The certificate on the same is attached."** This being a reference from the conciliator, it is clear that the respondent did not object to the conclusion of the collective agreement. Thus the Court returns that the claimant is entitled to the prayer that the respondent to sign the negotiated collective agreement without any further delay.
- b) The claimant has prayed that the respondent to pay workers arrears from the effective date which is 1st January 2016 as agreed between the union and the Human Resource Manager. The Court considers that the collective agreement has not been signed or registered in Court as required in law so that it would be premature to seek to implement its terms and provisions. The prayer will therefore be declined.
- c) The respondent has prayed that the Respondent to pay union dues of the calculated arrears to the claimant. The Court finds that the prayer is in the nature of liquidated damages but which have not been computed or specifically pleaded. The justification for the union dues have not been provided by way of evidence of the recruited members in the respondent's employment and who are due to be deducted union dues alleged in the prayer. The Court returns that the prayer will fail as unjustified.
- d) As the respondent has not entered appearance or filed a response, each party will bear own costs of the suit.

In conclusion judgment is hereby entered for the claimant against the respondent for the declaration that the respondent to sign the negotiated collective agreement without any further delay; and each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 6th July, 2018.

BYRAM ONGAYA

JUDGE