



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 496 OF 2013

TAILORS & TEXTILES WORKERS UNION.....CLAIMANT

VERSUS

MILLS INDUSTRIES LIMITED.....RESPONDENT

RULING

1. By a reference filed on 10th April, 2013 the claimant union sought the decision of the court on five disputed issues on the negotiated CBA. Namely; general wage increment, basic wage for new entrants, house allowance, safari allowance and gratuity. The CBA was intended to cover the period between 1st June, 2012 to 31st May 2014 (now past)
2. The respondent has contended that the claim has been overtaken by events and that there would be no value in hearing the case. The claimant union however contended that the delay in determining the dispute was occasioned by the respondent who dragged their feet in moving forward the CBA negotiations before the Minister ultimately leading to the late filing of the suit.
3. The basis upon which the respondent did not accede to the disputed clause was stated as unfavourable business environment which led to losses. The claimant union however disputed this claiming the respondent was supplying uniforms to security agencies including police and military forces of the Kenya, Uganda and Rwanda among others. The claimant union further contended that the respondent sourced fabrics from USA under the AGOA program hence the issue of high cost of material did not arise.
4. The report by CPMU indicated that the number of unionisable staff maintained a constant trend during the period reviewed and that the annual labour cost assumed almost a gradual rise throughout the period. The report further noted that there had been gradual increase in the annual wage bill for unionisable staff and management. The annual wage bill for unionisable staff increased from Kshs 14.5 million in 2010 to Kshs 15.3 million in 2011, Kshs 17.4 million in 2012 to finally stand at Kshs 17.2 million in 2013.
5. Despite the fact that the union disputed that the respondent was going through difficult economic times, the CPMU report noted that the challenges facing the respondent includes stiff competition from the many players which had entered the market high cost of fabric and high labour cost. According to the CPMU report, the parties were negotiating their first CBA hence there was no outgoing CBA.
6. The report further noted that the percentage rise in the cost of living indices stood at 9.1% during the two year period which implied the claimant members were entitled to compensation of 10% on their wages as this was what they suffered due to loss of purchasing power during the period.
7. It is noted that the respondent never made any offer on wage increment. They argued that they effected the 14% wage increase which was given on Labour Day. It is true that the period to be covered by the CBA has since long passed however the workers in employment then were entitled to benefit from the CBA negotiated and concluded.
8. The CPMU report is a technical report removed from the subjective view of the disputants. The report has noted that the CPI index for the period reviewed was 10% and the claimants members were entitled to be compensated to this extent. Further, the Government minimum wage is the lowest minimum however, to pay minimum wage as recommended by government would be the lazy approach. Most business enterprises have unless for good cause paid over the recommended minimum wage.
9. Further compensation would likely give rise to greater labour productivity since it is usually good business practice and government wage policy that workers get a share of the wealth they have helped create.
10. To this extent the court will award the claimant's members as follows:

a. 10% increment over the minimum wage for the period of the CBA

b. The other disputed aspects of the CBA be incorporated and negotiated afresh in the subsequent CBA if not done already.

11. It is so ordered.

Dated at Nairobi this 6th day of July, 2018

Abuodha J. N.

Judge

Delivered this 6th day of July, 2018

Abuodha J. N.

Judge

In the presence of :

.....Claimant

..... Respondent