



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 210 OF 2017**

***(Before Hon. Justice Mathews N. Nduma)***

**KENYA ENGINEERING WORKERS UNION.....CLAIMANT**

**VERSUS**

**NYANZA ENGINEERING AND HARDWARE LIMITED.....RESPONDENT**

**J U D G M E N T**

1. This is an economic dispute and the issues in dispute are:-

- a. Basic Minimum Wage.
- b. General Wage Increase.
- c. Housing Allowance.
- d. Leave Travelling Allowance.
- e. Safari Allowance.
- f. Effective Date and duration.

2. The parties have a Recognition Agreement and registered Collective Bargaining agreement dated 16<sup>th</sup> September, 2011 to 1<sup>st</sup> May, 2013.

3. The Collective Bargaining Agreement in dispute is intended for the period May 2015 to May 2017.

4. The Claimant wrote a Memorandum of Demand to the Respondent. The Respondent made no counter offer on any of the items. A report of dispute was made to the Ministry of Labour. Hellen Maneno was appointed conciliator. The dispute was not resolved and was filed in court.

5. The Claimant has filed statement of claim which has been responded to by the Respondent. The CPMU, Ministry of Labour and Social Protection filed an economic report with the court on 9<sup>th</sup> February, 2018 analyzing the state of the Respondent vis a vis the demands made by the union.

6. The court has analyzed the evidence before court and has arrived at the following conclusion on the issues in dispute:-

- (a) The Respondent has adjusted the basic minimum wage bill upwards. The statutory rates were raised by 12% in the year 2015 General Wage order and the Respondent is already in conformity effective 1<sup>st</sup> May, 2015.
- (b) General Wage increase.

7. The Claimant proposes general wage increase of 20% for the 1<sup>st</sup> year and 20% the 2<sup>nd</sup> year. This would result in total additional wage bill of Kshs.437,357.28. The Respondent offers nil wage increase.

8. The cost of living as measured by the consumer price index (CPI) for the period of the CBA being 1<sup>st</sup> May 2013 to 1<sup>st</sup> May, 2015 for the County is 13.75. Currently there are only 4 unionisable staff. Overall number of staff declined during the period under review. The

unionisable labour cost for the 4 remaining staff is currently Kshs.1,075,812.

9. Going by the above and considering the submissions by the parties the court awards the unionsable employees 7% salary increase for the 1<sup>st</sup> year and 7% salary increase for the 2<sup>nd</sup> year making a total wage increase of 14%.

#### **House Allowance**

10. Guideline No.2(a)(ii) of 2005, provides for separate compensation for housing cost increases of up to ½ of the cost increase for the period at 7.45%. Under the current CBA, employees are entitled to Kshs.2,500 housing allowance or 15% of the basic salary which ever is higher. The court awards Kshs.2,700 house allowance or 15% of the basic salary which ever is higher considering the 7.45% CPI on housing.

#### **Leave Travelling Allowance**

11. The current CBA provides Kshs.2,300 for leave travelling allowance. The Claimants propose Kshs.2,500 for the first year and Kshs.3000 in the second year.

12. Most of the staff are within Kisumu County while others are largely from the larger Nyanza and Western Kenya .

13. Current expense on the item is Kshs.9,600 per year. The demand would raise the costs by Kshs.800 for the first year and Kshs.2,000 for the 2<sup>nd</sup> year. Given the current financial performance of the Respondent as depicted under Table 7 of the economic report, the company made some profit in the year 2014 and huge losses in the year 2015. The court makes no award on this items taking all factors into consideration.

#### **Safari Allowances**

14. The current CBA provides Kshs.150 for breakfast; Kshs.230 for lunch; Kshs.250 for dinner and Kshs.1,000 accommodation.

15. The Claimant proposes Kshs.150 for breakfast, Kshs.230 for lunch, Kshs.280 for dinner and Kshs.1,500 for accommodation. This is an occasional expense when an employee is on duty away from the place of work. Most of the expenses on this item are on transportation cost during the year under review.

The proposals by the union are reasonable and are awarded given the number of staff has considerably reduced.

#### **Effective Date**

16. The Claimants want a revision of the CBA for the two years period 1<sup>st</sup> May 2015 to 30<sup>th</sup> April 2017 to succeed the 2013/2015 registered CBA. The Respondent is pleading in ability to pay. Given the small number of unionsable staff left, and the requirement by the Recognition Agreement that Collective Bargaining Agreement be renewed every two years and taking into account the 12% minimum wage increase in the year 2015, the effective date of the new CBA would be 1<sup>st</sup> May 2016 to 30<sup>th</sup> April, 2018.

17. The final orders of the court are as follows:-

(i) No Review of basic minimum wage.

(ii) 7% General Wage increase for the 1<sup>st</sup> year and 7% increase for the 2<sup>nd</sup> year. Total 14%.

(iii) Kshs.2,700 house allowance or 15% of the basic salary which ever is higher.

(iv) Safari Allowance –

a) Kshs.170 for Breakfast.

b) Kshs.230 for lunch.

c) Kshs.280 for Dinner and

d) Kshs.1,500 for accommodation.

e) Effective date is 1<sup>st</sup> May, 2016.

**Dated and Signed in Kisumu this 20th day of September, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Araka for Claimant Union

Mr. Masake for Respondent

Chrispo – Court Clerk