



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 31 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 24th October 2018)

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONAL, HOSPITALS AND ALLIED WORKERS

(KUDHEIHA).....CLAIMANT

-VERSUS-

KENYATTA NATIONAL HOSPITAL.....RESPONDENT

RULING

1. The Claimants herein filed their Memorandum of Claim dated 14/1/2015 on even date alleging failure by the Parties to agree on 9 Clauses of the Collective Bargaining Agreement.
2. The Claimant contended that they entered into a Recognition Agreement and negotiated and conclusively signed two Collective Bargaining Agreements with the Respondent. The Claimant avers that they represent employees in Job Group K17 to K6. The Claimant avers that the current Collective Bargaining Agreement with the Respondent expired on 30th June 2013 and they sent proposals to the Respondent in order to revise the same.
3. The Claimant avers that they met severally with the Respondent where most clauses were agreed upon except the 9 which went before the conciliation process at the Ministry of Labour. The dispute remained unsolved hence this suit.
4. When the parties appeared before this Court on 20th February 2018, I directed the parties to submit their written Memorandums on the contentious issues to the Central Planning and Monitoring Unit (CPMU) Ministry of Labour.
5. The Central Planning and Monitoring Unit (CPMU) was required to consider them and then file a report before Court for consideration.
6. The contentious issues in the proposed Collective Bargaining Agreement concern 9 clauses namely:-

1. Preamble (d) on definition of Health Worker

2. Salary increase

3. 7.3 - Medical Risk Allowance

4. 7.4- Commuter Allowance

5. House Allowance

6. 7.10 - Extraneous Allowance

7. 10.1 (f) – Leave Allowance

8. 12. Transport and Traveling

9. 12.7 - Death and funeral announcement in the print and electronic media

10. Effective date and duration of the CBA

7. The Parties were directed to file their submissions in respect of the 9 contentious clauses in the Collective Bargaining Agreement.

8. The main issue this Court should consider is whether it can impose condition on Parties in their Collective Bargaining Agreement negotiations. Article 41 of the Constitution of Kenya states as follows:-

1) "Every person has the right to fair labour practices.

2) Every worker has the right:-

a) to fair remuneration;

b) to reasonable working conditions;

c) to form, join or participate in the activities and programmes of a trade union; and

d) to go on strike.

3) Every employer has the right:-

a) to form and join an employers organisation; and

b) to participate in the activities and programmes of an employers organisation.

4) Every trade union and every employers' organisation has the right:-

a) to determine its own administration, programmes and activities;

b) to organise; and

c) to form and join a federation.

5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

9. Other than this provision, it is my position that this Court should not interfere with the Parties free will to negotiate because this is unconstitutional and against provisions of Article 41 of the Constitution. I will therefore decline to grant the orders sought in this claim and refer the parties back to the negotiating table.

Dated and delivered in open Court this 24th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Samson Kioko for Claimant – Present

Job Nyasimi for Respondent – Present