



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 118 OF 2017

(Before Hon. Justice Mathews N. Nduma)

KENYA HOTELS & ALLIED WORKERS UNION.....APPELLANT

VERSUS

NYANZA CLUB.....RESPONDENT

J U D G M E N T

1. This is an economic dispute in which the Claimant Union seek increase of General Wage and House Allowance for its members employed by the Respondent.

2. The Claimant relied on a Memorandum of Claim filed on 28th March, 2017 in which it avers that, collective bargaining negotiations on the two items between the Union and the club have reached a dead lock. That the dispute was reported to the Ministry of Labour. A conciliator was appointed but has failed to resolve the dispute and issued a certificate of unresolved dispute dated 24th June, 2016.

3. The claimant seeks clause 33 and 34 of the current Collective Bargaining Agreement to be reviewed with effect from 1st July, 2015 to award employees 50% General Wage Increase and to provide for Kshs.5,000 house allowance per month for the 1st year and Kshs.5,000 for the second year and in the alternative, the Respondent to provide at all times at its expense reasonable housing to unionisable staff.

4. The Respondent filed a Memorandum of Defence on 28th February, 2018 in which on the face of it, is responding to a non-existent claim of termination. In short, the statement of defence is irrelevant and does not address the claim before the court.

Economic Investigation Report

5. The Chief Economist, Central Planning & Monetary Unit, Mr. Peter Mukua from the Ministry of East Africa Community, Labour and Social Protection, filed a report with regard to the dispute. The economist interviewed the club administrator Mr. Genga Asiare and Union Officers. In addition the expert, analyzed documents relevant to this suit.

6. In terms of the report the club recognized the union on 6th May, 2015. The parties were in the process of negotiating their first Collective Bargaining Agreement where all clauses were agreed upon except clauses 33 and 34 on General Wage and House Allowance. The union proposed 50% salary increment and Kshs.5,000 house allowance and the Respondent made no offer or counter offer at all to the union's demand.

7. CPMU wrote that consumer price indices for all Kenya Provinces combined except Nairobi rose by 16.94% between August 2015 and May 2017 or about 8.5% per year. That this would be the compensation for the rise in the cost of living. That the compensation factor for Housing Allowance would be half of the above which is 8.5% for the two year period or 4.30% per year.

8. CPMU further noted that the wage guidelines of 23rd November 2005, allows for adjustment of wages based on the growth of firm's productivity. The Respondent failed to provide the requested information to enable CPMU to write a comprehensive report on labour costs, wage bill, housing allowance bill and the implication of Claimant's demands. Due to the lack of information the CPMU was unable to prepare a detailed report.

Determination

9. Both parties have filed written submissions in this matter. Considering the pleadings by the claimant, the statement of defence, CPMU report and the submissions by the parties, the issues for determination are –

(i) Whether the Claimant Union is entitled to the 50% General Wage Increase and

(ii) Kshs.5,000 house allowance for the unionsable staff of the Respondent for the two year period in question.

10. Section 57(1) of Labour Relations Act, 2007 obliges an employer that has a recognition Agreement with a Union covering unionsable employees to negotiate and conclude a Collective Bargaining Agreement (CBA) with the union in the following terms –

“An employer, a group of employers or an employer’s organization that has recognized a trade union in accordance with the provisions of this part shall conclude a collective agreement with the recognized trade union setting out terms and conditions of service for all unionable employees covered by the Recognition Agreement.”

(emphasis mine)

11. The law further obliges the employer to disclose to the union all relevant information that will allow the trade union to effectively negotiate on behalf of employees as follows –

“57(2) for the purposes of conducting negotiations under sub-section (1), an employer shall disclose to a trade union all relevant information that will allow the trade union to effectively negotiate on behalf of employees.”

(emphasis mine)

12. In the present case, the Respondent made every effort to derail the negotiations and to allow a proper economic analysis to allow effective negotiation and determination of the issues in dispute by denying the conciliator and CPMU expert the relevant information especially its audited accounts and other relevant information regarding its capacity, staff component and costs.

13. Furthermore, the Respondent filed an irrelevant and hollow statement of defence to the claim literally leaving this suit entirely undefended.

14. The court in its determination of economic disputes is heavily guided by the information presented by the parties and the expert opinion provided by the labour experts as dictated by section 15 of the Employment and Labour Relations Court Act, Cap 234 Laws of Kenya.

15. In this respect, the court is well guided by the CPMU report on consumer price indices for the region for the period between August, 2015 and May 2017 which rose by 16.94% (approximated) at 17% for the two years period to be covered by the Collective Bargaining Agreement. This translates to 8.5% rise for each year in respect of the General Wage and 4.3% per year in respect of the House Allowance.

16. Accordingly, the court awards the Claimant union in respect of all unionsable staff of the union as follows:-

(a) General Wage increase of 8.5 % for the first year of the Collective Bargaining Agreement and 8.5% increasement for the 2nd year of the collective Bargaining Agreement.

(b) House Allowance is awarded at 15% of the basic salary or Kshs.5,000 per month whichever is greater for the period of the collective Bargaining Agreement.

(c) The issue of effective date of Collective Bargaining Agreement will impact the bottom line of the club. We are now nearing the end of 2018, and since this is the first Collective Bargaining Agreement by the parties, the court finds that it is in the interest of Justice and fair play that the effective date of the first Collective Bargaining Agreement be 1st January, 2018. The Collective Bargaining Agreement shall therefore cover the period 2018/2020. Arrear salary and house allowance is therefore effective from 1st January, 2018 and the expiry date of the Collective Bargaining Agreement shall be 30th December, 2019.

(d) The Collective Bargaining Agreement be concluded and filed with the court within 30 days in terms of the Judgment.

Dated and Signed in Kisumu this 13TH day of DECEMBER, 2018

Mathews N. Nduma

Judge

Appearances

M/s. Mwaka for Claimant

Mr. Ngala for Respondent

Chrispo – Court Clerk