



**REPUBLIC OF KENYA**

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

**CAUSE NO. 73 OF 2013**

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

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

**VERSUS**

**ELDORET STEEL MILLS LIMITED.....RESPONDENT**

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

1. The suit was filed on 26<sup>th</sup> February, 2013 seeking the court to resolve an economic dispute by concluding dead locked Collective Bargaining Agreement (CBA) between the Claimant Union and the Respondent. The Claimant filed the list of demands presented to the Respondent for purposes of joint negotiations. Dispute was reported to the Ministry of Labour on 23<sup>rd</sup> April, 2012. Mrs. Chemursoi was appointed conciliator. Conciliation meetings were held on 13<sup>th</sup>, 14<sup>th</sup> and 21<sup>st</sup> August 2012 and 19<sup>th</sup> November, 2012 but there was failure to agree on items 1 to 10 of the Collective Bargaining Agreement (CBA) and a certificate of unresolved dispute was issued on 20<sup>th</sup> November, 2012.

2. The parties have a recognition agreement entered into on 2<sup>nd</sup> December, 2011.

3. The Respondent filed a reply to the claim in which the Respondent decried non-availability of raw materials to sustain production. The Respondent made counter offers as follows:-

15% basic salary increment to the 25% proposed by the Claimant.

Respondent offered Kshs.500 leave travelling allowance to the 3,000 proposed by the union for the 1<sup>st</sup> year and Kshs.3,500 for the 2<sup>nd</sup> year.

The Respondent offered Kshs.100 for breakfast to 300 proposed; Kshs.150 for lunch to 400 proposed; Kshs.150 for dinner to 500 proposed; Kshs.300 overnight stop to 1,200 proposed.

4. Respondent further provided one month salary in lieu of redundancy notice; 15 days severance pay for each completed year of service and declined to guarantee alternative employment and transport.

5. With regard to transfer to another town, the Respondent offered Kshs.5,000 and to provide transport in addition.

6. The Respondent declined to offer milk to production employees.

7. The Respondent further proposed effective date to be 1<sup>st</sup> January 2012.

8. The CPMU, Ministry of Labour visited the Respondent and received pleadings by the parties and prepared Economic Investigation Report to assist the court in the determination of the suit.

9. CPMU informed the court in its report that the Respondent Company was wound up on 4<sup>th</sup> June 2014 and all the 127 workers were paid their severance benefits on the same day and that union officials were present on the day the company was wound up and are aware of the situation.

10. The Respondent company was sold do Western Steel Mills Limited at a cost of 185 Million Kenyan Shillings and the new occupier took possession of the company premises.

11. The Claimant union was unable to present to the court evidence contrary to the findings of the Ministry of Labour.

In any event official reports from Government are presumed to be a reflection of true status unless the contrary has been proved.

12. It is the court's considered view and finding that this suit has been overtaken by events and the same is dismissed with no order as to costs.

**Judgment Dated, Signed and delivered this 6th day of December, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Omollo for Claimant Union

Mr. Peter Mulwa for CPMU

Mr. Sutel for Respondent

Chrispo – Court Clerk