



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO.685 OF 2016

KENYA PLANTATION & AGRICULTURE WORKERS UNION...CLAIMANT

VS

CARGILL KENYA LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The claimant brought this suit on 19.9.2016 under Certificate of Urgency seeking for this Court's Order to compel the respondent's Chief Executive Officer (CEO) to sign the concluded Collective Bargaining Agreement (CBA) within 7 days and in default execution to issue. It is the claimants case that she had Recognition Agreement with the respondent but although they have concluded a CBA for the period 2016-2018, the respondent has refused to sign the same. That instead, the respondent has resorted in dismissing some of her employees on account of their union affiliation.

2. The respondent admits that she has signed a Recognition Agreement with the claimant and have indeed negotiated a CBA in full save for the item of gratuity. It is her case that on 5.5.2016 she inadvertently agreed to gratuity on 40 days per year of service instead of 30 days. That when she realized the mistake, she notified the claimant but the latter stuck to the 40 days pay per year of service. The respondent contends that the gratuity at 40 days per year of service is too high and not economically viable. She therefore maintains that her offer of 30 days pay per year is much better than the 23 days pay the employees were entitled to under a previous CBA negotiated by their former union (Kenya Shipping Union).

3. The suit was disposed of by way of written submissions on the basis of the pleadings and documents filed.

Analysis and Determination

4. After careful consideration of the pleadings, evidence and submissions presented to the court, it is clear that the parties herein have a Recognition Agreement and have indeed negotiated and concluded a CBA. There is also no dispute that the respondent has refused to sign the CBA as negotiated on ground that the agreement on the issue of gratuity was reached inadvertently. That although the respondent intended that gratuity be agreed at 30 days pay per year of service, her negotiating team accepted the 40 days proposed by the claimant. The issue for determination are:

a. Whether the agreement reached on 18.5.2016 regarding payment of gratuity is binding on

the parties and it is irreversible.

b. Whether the reliefs sought should be granted.

Gratuity Agreement

5. The real question for determination herein is when do agreements between parties to a CBA become binding and enforceable. The answer to that question has in section 59 of the Labour Relations Act. Under section 59(b), a CBA is incorporated into the contract of employment for every employee covered by the CBA. Under section 59(5) of the Act, the CBA only becomes enforceable and can only be implemented upon registration by this court and effective from the date agreed by the parties. Consequently, it is clear that a court should not be called upon to enforce agreements negotiated by the parties and not yet given the force of law through registration of a CBA by the court because such agreements are not binding on the parties.

Reliefs

6. This suit was brought under Certificate of Urgency and before conciliation by the Labour Cabinet Secretary. I would have referred the dispute for conciliation but I think it will not be for the best interest of the employees. The best interest of the employees is in the conclusion of the CBA so that in case of any terminations they can get gratuity. There is no dispute that under the CBA negotiated by their former union, the gratuity payable was 23 days pay per year of service. The offer of 30 days offered by the respondent herein is a better bargain. Consequently, I will direct that the parties execute the CBA in good faith with gratuity item agreed at 30 days pay per year of service. Nothing else will change on the item of gratuity.

Disposition

7. For the reasons stated above, the parties are given 14 days to sign the CBA indicating gratuity payable at the rate of 30 days payable per year of service. Each party to bear her own costs.

Signed, dated and delivered at Mombasa this 13th day of January 2017.

O.N. MAKAU

JUDGE