



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO 1639 OF 2016**  
**LONDON DISTILLERS (K) LIMITED.....CLAIMANT**  
**VERSUS**  
**KENYA UNION OF COMMERCIAL**  
**FOOD AND ALLIED WORKERS.....RESPONDENT**

**RULING**

1. This matter first came to Court on 16<sup>th</sup> August 2016 when the Claimant sought orders prohibiting the Respondent Union from calling its members to industrial action. Upon hearing Counsel for the Respondent *ex parte* I certified the matter urgent and set it down for *inter partes* hearing on 19<sup>th</sup> August 2016.

2. On 19<sup>th</sup> August 2016 the parties recorded the following consent;

- a. That the Claimant would effect a 17% wage increment for the Respondent's members for the year 2016/2017 with effect from 1<sup>st</sup> May 2016;
- b. That the other terms would be negotiated and agreed upon within three (3) months;
- c. That the negotiations would be facilitated by a new Conciliator to be appointed by the Chief Industrial Relations Officer;
- d. That the Respondent would call off the strike by 23<sup>rd</sup> August 2016.

3. The Respondent subsequently complained that the Claimant had failed to implement the 17% wage increase for the following seventeen (17) employees:

- i. Peter Miringu
- ii. Stephen Lolori
- iii. Josphat Okari
- v. Richard Simiyu

- v. Lameck Mogaka
- vi. Jackson Ambunya
- vii. Jairo Ambwere
- viii. William Nyakundi
- ix. Stephen Musyoka
- x. James Kamundia
- xi. Moses Mbinda
- xii. Ernest Obati
- xiii. Justus Opati
- xiv. Simon Makori
- xv. Dominic Kinywa
- xvi. Joseph Kioko
- xvii. Aaron Musyoka
- xviii. Duke Onkware
- xix. George Kimani
- xx. Geoffrey Walela
- xxi. Nelson Musasia
- xxii. Calistus Wekesa
- xxiii. Joseph Musyoka
- xxiv. Samuel Gitau
- xxv. Simon Mboga
- xxvi. David A. Okore
- xxvii. Harrison Tuti

4. On its part, the Claimant maintains that all the unionisable employees had been paid. In light of the divergent positions taken by the parties, I directed them to file submissions on this issue which is the subject of this ruling.

5. In the submissions filed by the Claimant on 6<sup>th</sup> March 2017, it is submitted that the 27 persons in issue are employees of Galot Estate and not the Respondent. The Claimant adds that Galot Estate was engaged in pre-recognition communication with the Union.

6. In support of its case the Claimant produced letters of appointment issued to the 27 persons on the letterhead of Galot Estate Kiambu. The Court however also saw pay slips issued by the Claimant to these

same persons. The Claimant terms this as an administrative error.

7. The letters of appointment date between 1998 and 2015 while the pay slips date between 2016 and 2017. Without any substantive explanation of this inconsistency, the Court formed the opinion that as at the time this dispute arose the 27 persons were employees of the Claimant. This is buttressed by the submission by the Respondent, which the Claimant did not contest, that the 27 employees had benefited from the 1<sup>st</sup> instalment of the 17% wage increment prior to the dispute.

8. In light of the foregoing finding, the Claimant is directed to effect the 2<sup>nd</sup> instalment of the 17% wage increment in favour of the 27 employees within the next 30 days from the date of this ruling.

9. I make no order for costs.

10. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Sang for the Claimant

Mr. Owiyo for the Respondent