



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NUMBER 1661 OF 2016**

**KENYA QUARRY & MINE WORKERS UNION.....CLAIMANT**

**VERSUS**

**NATIONAL CEMENT COMPANY LIMITED.....RESPONDENT**

**RULING**

1. By a Notice of Motion filed on 19<sup>th</sup> August, 2016, the claimant sought the order of this court compelling the respondent to give its unionisable workers increment as per the cost of living indexes. The application was supported by the affidavit of Wafula Wamusamia who deponed on the main that there was a recognition agreement signed with the respondent on 28<sup>th</sup> January, 2011 and that the respondent had been deducting and remitting union dues. Mr Wamusamia also deponed that the CBA expired in February, 2015 and since the expiry efforts to renew the CBA have been frustrated by lack of co-operation from the respondent.

2. The background to the dispute as laid out by the claimant was that the respondent had been deducting union dues since 1<sup>st</sup> July, 2011 without deducting agency fees contrary to the Ministerial order contained in the Kenya Gazette Notice Number 10227 of 26<sup>th</sup> August, 2011. The claimant wrote a reminder on 14<sup>th</sup> September, 2011 to the respondent requesting them to implement the Ministerial order and remit union dues. The claimant further by a letter dated 18<sup>th</sup> January, 2013 revisited the issue and requested for list of employees enjoying the CBA but who were not members of the Union.

3. Regarding the CBA, the claimant stated that on 12<sup>th</sup> February, 2013 they sent the respondent proposal for inputting to the proposed new CBA and that one was concluded on 20<sup>th</sup> June, 2013 and forwarded to FKE for onward transmission to the court. This CBA expired on 19<sup>th</sup> June, 2015 and since then the respondent has been elusive over negotiating a new CBA forcing the claimant to report a trade dispute to the Cabinet Secretary for Labour who appointed a conciliator.

4. The respondent failed to attend most of the meetings called by the conciliator but attended one on 10<sup>th</sup> November, 2015 and both parties agreed and signed on outstanding issues. On 10<sup>th</sup> August, 2016 the respondent wrote a letter to the conciliator saying that the claimant did not have members represented at the respondents employment yet on the same day received a cheque for Kshs 38,725.70 on account of union dues.

5. The respondent on its part filed a replying affidavit through one James Kariuki who deponed among others that the present proceedings were prematurely brought as the matter was still pending for

conciliation. Mr Kariuki further stated that out of a workforce of 500 the claimant only had 17 members since most of previous members had left respondent's employment. According to Mr Kariuki therefore, the claimant had to recruit more members first before they could continue to negotiate a new CBA.

6. Mr Kariuki therefore stated that failure to conclude the negotiations was claimant's fault because they did not recruit members from the respondent's workforce after so many left respondent's employment. The respondent herein did not seem to address and or refute the complaint by the claimant that despite the fact that the Cabinet Secretary gazetted an order for payment of agency fee, they have not been doing so despite reminders by the claimant.

7. Payment of agency fee is a matter of law and naturally flows from conclusion and registration of a CBA and upon request by the union concerned to the Cabinet Secretary who once has issued an order as this case, the agency fee becomes payable.

8. On the question of the CBA the court will hold that the expired CBA shall continue to be in force until a new one is concluded. Regarding recognition, the respondent cannot use the fact that in its view the claimant does not have simple majority to deny the claimant recognition. The claimant is entitled to recognition until such time as the respondent shall successfully apply to the Labour Board to de-recognize the claimant. If however it be true that the claimant has fallen in membership below the simple majority needed, they shall forthwith without hinderance but at the convenience of the respondent enter the latter's premises and embark on recruitment of new members in the respondent's to make for the shortfall.

9. In conclusion the court orders as follows:

- a. The respondent to remit within 30 days of this judgment to the claimant any arrears of agency fee for those unionisable employees who were not and currently are not members of the claimant union but benefit from the CBA for the period 2013 – 2015 (currently in force until a new CBA is negotiated and registered)
- b. The claimant to enter into the respondent's premises during authorized hours but at the convenience of the respondent for purposes of recruiting new members.
- c. Parties to resume negotiations for a new CBA within 30 days from the date of this order and conclude the same within 60 days thereafter.
- d. The respondent be at liberty to apply to the National Labour Board for the de-recognition of the claimant in the event that the claimant fails to attain the requisite simple majority as required by the Labour Relations Act.
- e. There will be no order as to costs.

10. It is so ordered.

Dated at Nairobi this 21<sup>st</sup> day of July 2017

**Abuodha J. N.**

**Judge**

Delivered this 21<sup>st</sup> day of July 2017

**In the presence of:-**

..... for Claimant

.....for Respondent

**Abuodha J. N.**

**Judge**