

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 174 OF 2016

KENYA UNION OF COMMERCIAL,

FOOD AND ALLIED WORKERS.....CLAIMANT

VERSUS

KAPA OIL REFINERIES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 14th July, 2017)

JUDGMENT

The claimant union filed the memorandum of claim on 15.08.2016 alleging the respondent's refusal to pay salary arrears to one Beatrice Ndegwa, the grievant, and in line with the provisions of the collective bargaining agreement binding the parties for the period 2013 to 2014. The claim is for pay of 12 months' salary arrears at Kshs.12, 000.00 per month making Kshs. 144,000.00.

The respondent does not dispute the provisions of the collective agreement. The respondent's case is that the grievant joined the union voluntarily while she held the position of accounts assistant which fell in the category of administrative cadre holding confidential information as part of the respondent's management. After consultations involving the claimant, the respondent re-designated or re-assigned the grievant to a position in the respondent's establishment which was consistent with the grievant being properly eligible to join the union. The re-assignment was effective 31.03.2014 when the deduction and remission of the union dues were effected and the pay per the collective agreement effected with respect to the grievant. Thus, the respondent's case is that being part of the administrative staff, the grievant was not eligible to join the union and then enjoy terms of service per the collective agreement prior to the re-assignment.

The **only issue** for determination is whether the claimant is entitled to the prayer that the withheld Kshs. 144,000.00 be paid to the grievant being the pay accruing under the collective agreement but prior to the re-assignment of the grievant from the administrative cadre to unionisable cadre. The claimant submitted that the contested period of withheld pay per collective agreement was 9 months from 01.05.2013 to January 2014.

The court finds for the respondent. There is no dispute that as an assistant accountant the grievant and the claimant knew that the grievant was not eligible to join the union and to enjoy the pay under the prevailing collective agreement. The proper procedure was for the grievant to be re-assigned from the administrative cadre to the unionisable cadre and thereafter fully enjoy the union participation and benefits. The respondent acted accordingly and cannot be faulted in that regard in view of the steps taken to accord the grievant full rights to join and participate in the trade union activities as per Article 41 of the Constitution.

Accordingly the court returns that the suit will fail and in furtherance of good industrial relations between the parties, each will bear own costs of the suit.

In conclusion the memorandum of claim is hereby dismissed with orders that each party to bear own costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 14th July, 2017.

BYRAM ONGAYA

JUDGE