



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 271 OF 2016

(Formerly Cause No. 2077 of 2016 at Nairobi)

**BARAGWI FARMERS COOPERATIVE SOCIETY
LIMITED.....CLAIMANT**

VERSUS

**BANKING, INSURANCE & FINANCE UNION (KENYA).....
RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 17th November, 2017)

JUDGMENT

The statement of claim was filed on 07.10.2016 through Lorraine Oyombe Advocate of the Federation of Kenya Employers. The claimant prayed for judgment against the respondent for:

- a) A declaration that the claimant has fully implemented the parties' collective bargaining agreement.
- b) A declaration that the strike notice dated 03.10.2016 is illegal, unwarranted and amounts to bad industrial relations.
- c) An order directing the respondent to engage in negotiations over any issue arising in good faith.
- d) An order directing the respondent to sign the collective bargaining agreement.
- e) Any other order or relief the court may deem fit to make or grant.

The memorandum of response was filed on 21.02.2017 through Isaiah Munoru of the respondent trade union. The respondent urged that the strike notice issued on 03.10.2016 was legal and prayed for dismissal of the statement of claim with costs; the respondent to sign the CBA with 8% automatic annual increment; a declaration employees are entitled to go on strike; and for costs of the suit.

The parties are in a binding recognition agreement. They are in agreement that the dispute flows from the intended signing of their first ever collective agreement.

On 03.10.2016 the respondent issued a 14 days strike notice said to be in accordance with Article 41 of the Constitution of Kenya and section 76 of the Labour Relations Act, 2007. The 14 days strike notice was effective 04.10.2016. The notice partly stated thus, **“We have made every attempt to have the**

dispute on 8% automatic annual increment being paid as from October 2014 to date resolved but with no success. The employer has refused to sign the CBA after a protracted court cases. All our members will down their tools as from 18.10.2016.”

The claimant's case is that the strike notice was illegal. The parties have negotiated their first draft collective agreement. Disputes about the collective agreement had been subject of Cause No.111 of 2013 at Nyeri filed by the trade union against the claimant in the present suit. The court delivered judgment in the suit on 20.03.2015. The claimant's case is that the issue of 8% automatic annual increment was not agreed upon by the parties or ordered by the court in the said Cause No.111 of 2013 at Nyeri. The respondent's further case is that the issue of 8% automatic annual increment being outside the agreed collective agreement and not being part of the judgment in the said Cause No.111 of 2013 at Nyeri, the strike notice violated section 76 of the Labour Relations Act, 2007.

The respondent's case is that 8% automatic increment had been agreed to be retained at 8% during conciliation and therefore it was not a dispute for determination by the court in the said Cause No.111 of 2013 at Nyeri.

The point is whether the issue of 8% automatic increment was agreed upon before the conciliator and before filing by way of a reference to the court the said Cause No.111 of 2013 at Nyeri. The court has revisited the letter by the conciliator dated 12.07.2013 being the conciliator's certificate referring the dispute to court. The issues that were agreed upon have been listed from 1 to 44 and they do not include 8% automatic increment or automatic increment. The same issue is not amongst the issues that parties had failed to negotiate and to agree upon before the conciliator. Therefore, the court returns that the issue of 8% automatic increment is strange to the collective agreement as was bargained before the conciliator or as far as the issues in dispute that were referred to the court in the said Cause No.111 of 2013 at Nyeri are concerned.

Thus, the court returns that the strike notice was illegal in so far as it was based upon the issue of 8% automatic increment. In particular, the dispute that formed the subject of the strike notice did not concern terms and conditions of employment or a trade dispute that was unresolved after conciliation as envisaged in section 76(a) and (b) of the Labour relations Act, 2007. The court further returns that the subject of the strike notice in such circumstances did not constitute an intended strike in furtherance of a trade dispute as per section 78 (1) (g) of the Act.

To answer the **1st issue** for determination the court returns that the strike notice dated 03.10.2016 was illegal, unwarranted and amounted to bad industrial relations.

The **2nd issue** for determination is whether the respondent is entitled to the other remedies as prayed for. The court returns as follows:

- a) The claimant prayed for a declaration that the claimant has fully implemented the parties' collective bargaining agreement. The evidence of such implementation was not provided to the court. There was no dispute that the collective agreement had not been signed and registered as provided for in the law. Accordingly, the court returns that it would be premature to make the declaration as prayed for.
- b) The court returns that there being no specific arising issue, an order directing the respondent to engage in negotiations over any issue arising in good faith was a blurred prayer which is hereby declined.
- c) The claimant has established that the draft collective agreement should be signed without introducing matters not agreed upon between the parties or not ordered by the court and the claimant is entitled to an order directing the respondent to sign the collective bargaining agreement accordingly.
- d) There was no prayer for costs and in furtherance of good industrial relationship between the

parties the court makes no orders on costs.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) The declaration that the strike notice dated 03.10.2016 was illegal, unwarranted and amounted to bad industrial relations.
- b) The order directing the respondent to sign the collective bargaining agreement excluding the issue of 8% automatic increment accordingly.
- c) No orders on the costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 17th November, 2017**.

BYRAM ONGAYA

JUDGE