



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2437 OF 2012

KENYA GAME HUNTING & SAFARI WORKERS UNION...CLAIMANT

VERSUS

MICATO SAFARIS.....RESPONDENT

JUDGMENT

1. The claimant in this dispute is a Trade Union Registered under section 19 of Labour Relations while the respondent is limited liability company incorporated in Kenya in 1969. According to the respondent, its core business is provision of ground services which include transportation, guided tours, camp and lodge bookings to guests sent direct by their sole clients Taicoa Limited of the United States of America.
2. The parties have a valid recognition agreement and have concluded several Collective Bargaining Agreements. The one for the period 1st May, 2012 to 30th April, 2014 is the one that reached a deadlock and in respect of which the parties came to court after failing to reach an agreement during conciliation.
3. According to the claimant, the respondent is able to pay the claimants demand of 13% wage increase in first year and 13% in second year, and further that the respondent is able to pay 25% house allowance increase.
4. The claimant based their contention on the fact that the respondent gave three of its non-unionisable staff a higher percentage payrise than demanded by the claimants. According to the claimant, contrary to the allegations that the respondent was running at a loss, the respondent had not reported any loss for the past 2 years.
5. The respondent on the other hand submitted that given the state of tourism industry in the country the respondent could not make any further offer. The respondent as it were made a nil offer.
6. Concerning the allegation that the respondent had increased salaries for managerial staff, the respondent denied this was true. Counsel submitted that what the claimant was terming a wage increase was a restoration of the managerial staff basic salary which was reduced in the wake of 2007/2008 political disturbances which adversely affected respondent's operations.
7. The Central Planning & Monitoring Unit report made the following observations. First, the respondent financial performance over the period under review had been unhealthy as they posted

net losses through out. The report further noted that the major consumer of income was direct costs incurred in accommodation of tourists, park fees, hired transport and safari allowances to the field staff.

8. Central Planning & Monitoring Unit's report observes further that the rise in consumer price indices stood at approximately 29% during the period under review. However in order to justify wage increase there must be growth in the firms productivity which required that productivity forms the major factor for any additional wage since workers should get a share of wealth they have helped the respondent to create during the period under review.

9. The report further noted that further compensation would arise if there was huge wage disparities within the organization or within the sector or industry for similar occupations. However, Central Planning & Monitoring Unit compared the wages of unionisable cadres of employees in the respondent's organization and found that there were no big wage differentials.

10. The report further observed that the wage bill for management was all-inclusive while that of unionisable cadre is quoted minus commissions earned every month. If consideration was made for the total earnings of each cadre, then the gap in earnings between management and unionisable staff would be minimal.

11. The Court has considered submissions by the disputants and has also had the benefit of reviewing the technical reports submitted by Central Planning & Monitoring Unit. Whereas the Court is usually not bound by technical reports but where they are credible and give a professional and technical analysis of the issue in dispute they become persuasive authority on the issue in dispute which in absence of other factors to the contrary, will be relied upon.

12. The Central Planning & Monitoring Unit's report has made the following important observations. First, the wage differential between the management and unionisable staff is minimal. Further the difference between the wages offered by the respondent and its counterparts in the sector and the industry in general is also minimal. The report has noted that the respondent was struggling to keep the company afloat due to negative travel advisories.

13. The purpose of wage increment is to cushion the worker from inflation by enhancing purchasing power however this can only be effectively achieved against a background of improved performance and sustainability of the wage bill. A wage increment whose effect would be to trigger the journey to collapse of an organization is harmful to the selfsame worker it was intended to benefit.

14. The Court has noted that despite operating in a very challenging and competitive environment the respondent has kept the wages paid to its unionisable employees competitive and within minimal difference with other players in the sector. This fact coupled with the fact that the Collective Bargaining Agreement in dispute was for the period of 1st May, 2012 to 30th April, 2014 which is past, recommends to the Court that in order to retain financial stability of the respondent considering the environment its operating under, no wage increments should be made for the period under review. The Court however directs that the issues that were subject of the Collective Bargaining Agreement period of 2012-2014 be revisited during the bargaining of the Collective Bargaining Agreement for the next cycle. That is to say 2014-2016.

15. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge