



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CUASE NO.974 OF 2015

THE KENYA MEDICAL PRACTITIONERS, PHARMACISTS

AND DENTISTS UNION CLAIMANT

VERSUS

THE PRINCIPAL SECRETARY MINISTRY OF HEALTH 1ST RESPONDENT

THE HO. ATTORNEY GENERAL 2ND RESPONDENT

AND

THE PRINCIPAL SECRETARY MINISTRY OF LABOUR,

SOCIAL SECURITY AND SERVICES 1ST INTERESTED PARTY

THE COMMISSION SECRETARY SALARIES

AND REMUNERATION COMMISSION 2ND INTERESTED PARTY

JUDGEMENT

1. Issue in dispute – failure to submit to the Employment and Labour Relations Court for registration the Collective Bargaining Agreement executed by the parties on the 27th of June 2013

Claim

2. The Claimant is a trade union registered to represent doctors and are employees of the 1st respondent. The 1st Respondent is the principal officer of the ministry of health having succeeded the Ministry of Medical Services and Ministry of Public Health and Sanitation while the 2nd Respondent is the Principal Advisor of the government. The 1st interested party is the Principal Officer if the Ministry of Labour while the 2nd interested party (SRC) is principal officer of the constitutional commission mandated to advise the national and county governments on the remuneration and benefits of public officers.

3. The Claimant members are employed by the 1st Respondent through the Public Service Commission in various capacities as medical practitioners on permanent and pensionable terms. On 22nd march 2012 the principal officers and officers of the 1st Respondent signed a Recognition Agreement with the claimant. On 27th June 2013 following negotiations with the Respondents and other stakeholders and based on the

recognition agreement, a Collective Bargaining Agreement was executed. This was to be followed with the 1st Respondent submission of the same with the court for registration as under the Labour Relations Act.

4. On 4th July 2012, upon the Claimant and Respondents commencing negotiations on the, the SRC issued circular, No. SR/CG/VOL III, requesting public service organisations to submit all Collective Bargaining Agreements with remuneration proposals to itself for analysis and advice. Upon failure by the 1st Respondent to thus submit the Collective Bargaining Agreement with the court, the Claimant took the option to submit the same with SRC. The 1st interested party also failed to submit the Collective Bargaining Agreement to the court for registration and cited Circular issued by the SRC. The Claimant and the Respondents thus suspended negotiations to allow the interested parties act particularly noting the role of the SRC.

5. The Respondents and the interested parties have now in collusion or individually have put in place a calculated scheme to permanently and or indefinitely delay the registration of the Collective Bargaining Agreement. That the failure to submit the Collective Bargaining Agreement with the court for registration on 27th June 2013 is illegal and unlawful. Such breaches relate to the provisions of section 60(2) of the Labour Relations Act which requires an employer to a Collective Bargaining Agreement with the court for registration; section 60(5) he court has the discretion to register a Collective Bargaining Agreement as submitted or with amendments but the SRC attempt to modify the Collective Bargaining Agreement is in excess of its authority and while the Claimant was keen to omit the clauses subject of concern for the SRC pending guidelines, they have stalled the registration; and section 60(6) sets the principles for consideration by the court in addressing any amendments thus the SRC is acting beyond its mandate.

6. The claim is also that the Collective Bargaining Agreement should be registered by the court pursuant to the provisions of section 2 of the Labour Relations Act that define what a Collective Bargaining Agreement is; section 59(5) with regard to enforceability of a Collective Bargaining Agreement upon registration by the court; section 60 on the obligation of an employer to submit the Collective Bargaining Agreement with the Court for its registration with 14 days of conclusion; and article 41(4) of the constitution which provides for the right of a trade union and an employer to engage in collective bargaining and in the context of article 36 that gives the right to association and thus by entering into a Collective Bargaining Agreement, the Claimant and Respondents Collective Bargaining Agreement should be given meaning by a registration by the court.

7. The Claimant is seeking for an order that the Collective Bargaining Agreement executed by the Claimant and Respondent on 27th June 2013 be registered in its form and in the alternative that the Collective Bargaining Agreement be registered with any amendments or modifications agreed to by the parties. Also in the alternative, the Claimant is seeking a declaration that the Collective Bargaining Agreement though not registered be found as valid based on the general common law principles; an order that the Respondents jointly and severally meet the obligation of the Collective Bargaining Agreement executed by the Claimant and Respondent on 27th June 2013 commencing 1st July 2013 until the parties negotiate and register a new CA and that costs of the suit be paid to the Claimant with interests.

8. In evidence, the Claimant called Dr. Wilfred Ouma Oluga, the secretary General since 29th November 2014. The before being elected as such he was he secretary Western branch of the Claimant since August 2010. That the Claimant has a Recognition Agreement with the Ministry of Health since 22nd March 2012 and this was followed up with negotiations for the Collective Bargaining Agreement to agree on conditions of work. To arrive at the Collective Bargaining Agreement, this was after a return-to-work formula following a strike in December 2011 and parties have since engaged in long negotiations with the respondent, Public Service Commission, the Attorney General which lasted 2 years. The SRC did not participate at the Collective Bargaining Agreement negotiations and the Claimant had expected it to be registered by 27th December 2014.

9. That despite devolution, the Respondent has retained majority of Claimant members and in any event devolution does not invalidate a Collective Bargaining Agreement. The claim is to have the Collective Bargaining Agreement registered by the court and backdated to 1st July 2013 when it ought to have taken effect. The SCR has maliciously withheld its advice to delay the process of the Collective Bargaining Agreement registration.

Defence

10. In defence, the Respondents and 1st interested party state that they are strangers to the claim and have been wrongly enjoined and their names should be struck out of these proceedings with costs. That there is no cause of action demonstrated against them and where there was a Collective Bargaining Agreement signed, it was contrary to the law as the SRC advice had not been sought or consultations with National Treasury obtained. The national government in conjunction with the SRC are currently in the process of developing a wage policy for public officers and the Collective Bargaining Agreement herein was signed at a time when health services were being devolved and equally the health workers attached to the health facilities that were devolved were transferred to the respective county government. The respective county governments were not involved at the negotiations and signing of the Collective Bargaining Agreement.

11. That owing to the challenges and issues faced by the Respondents it was impractical to submit the Collective Bargaining Agreement to the court for registration. The signed Collective Bargaining Agreement is incapable of being implemented in its current status. It cannot be registered as it is unimplementable and the Claimant is aware of these challenges.

12. The claim is therefore frivolous and an abuse of court process. It lacks merit and should be dismissed.

13. In evidence, David Njoroge, the Director Human Resource Department, Ministry of Health testified that they engaged with the Claimant on a Collective Bargaining Agreement but the process was caught up by events and change of government and devolution which led to the Claimant members going to the counties. The former Permanent Secretary signed the Collective Bargaining Agreement after he had exited office and the circumstances under which it was signed were not clear. It was signed towards 27th June 2013 by Mark Bor, PS Ministry of Public Health and Sanitation. New PS had been gazetted Notice No.9067 of 2013 and his name was not on the list of PS. The new PS took over office with effect from 25th June 2013. The Ministry had also changed from Ministry of Public Health and Sanitation to the Ministry of Health.

14. That under the constitution, health care was devolved and Gazette Notice No.16 of 2013 dated 1st February 2013 was issued to this effect. At the time of signing the Collective Bargaining Agreement in June 2013, devolution had taken effect. The Collective Bargaining Agreement negotiations did not involve county governments, a crucial stakeholder.

15. The Collective Bargaining Agreement has not been implemented due to the facts that it was signed by a non-officer of the respondent. It had not been assessed by SRC and Treasury. The ministry had not approved its signing. Upon the claim herein being filed, this scuttled the negotiation process. On 27th November 2014 there was a consultative meeting on the Collective Bargaining Agreement with various stakeholders and the government has been pursuing the resolutions. The current suit has prevented progress on the conclusion of a Collective Bargaining Agreement.

16. Claimant's members fall under 48 employers – 47 county governments and the national government. The Claimant has not set out the different cadres of its members or shared an updated list of members. The health workers at the county are not under the Ministry of Health which does not pay or manage them and the ministry has no role over them. Upon conclusion of the suit herein, the Respondents and 1st interested party are keen to negotiate a Collective Bargaining Agreement.

2nd interested party

17. The 2nd interested party witness Anne Gitau testified that, the SRC as a constitutional commission set up under article 230 of the constitution has mandate to set and regularly review the remuneration and benefits of all state officers and advice national and county governments on the same. Claimant members are public officer by public funds.

18. On 28th June 2013 the Claimant presented the Collective Bargaining Agreement to the SR but the Respondent formally submitted it on 30th October 2013. A response to the Ministry of Health on 4th November 2013. The Collective Bargaining Agreement was not cleared for registration on the reasons that it had issues and if passed would have impact on the wage bill and therefore could not be approved in its form. The SRC therefore pointed out on the issues that should be addressed by the parties but the 1st Respondent stalled the process by failing to provide required information. The Claimant was thus informed the Collective Bargaining Agreement could not be registered for the reasons that;

19. There was non-involvements of all employing agencies both at national and country governments and the Recognition Agreement is only between the Claimant and the 1st Respondent yet the Collective Bargaining Agreement is intended to cover health staff countrywide. The Collective Bargaining Agreement should involve all players other than the 1st respondent;

20. Non-compliance with SRC regulations that requires all Collective Bargaining Agreement to conform to a 4 year review period yet the signed Collective Bargaining Agreement has a 2 year period;

The Collective Bargaining Agreement has policy issues that requires discussions with wider public service;

Proposed salary review and benefits will affect the wage bill and the 1st Respondent must demonstrate affordability and sustainability before registration; and

21. The Collective Bargaining Agreement contains issues with divergent positions with the 1st Respondent and the Claimant that required to be resolved before registration. That since, several meetings have been held with various stakeholders, especially meeting convened by the 2nd IP on 27th November 2014 which reached various resolutions;

That the signed Collective Bargaining Agreement could not be registered so as to involve other stakeholders – for inclusivity purposes;

Registration without recognition of county governments will present implementation problems – there be a review of the Collective Bargaining Agreement to recognise county governments;

Claimant to recognise changes occasioned by devolution and include all parties;

Involve all stakeholders especially the National Industrial Training Authority in development of policy for internship;

Key factors be delineated in terms of legal, policy and administration to allow for technical input;

Review the Collective Bargaining Agreement to ensure compliance with the constitution, law and SRC regulations and public service regulations;

Claimant to engage Council of Governors with a view to have Recognition Agreements with county governments and to have them incorporated in the Collective Bargaining Agreement as employer of health service providers;

Have an interagency technical team to review Collective Bargaining Agreement and expand it;

Review the financial implications that require allocation of funds by national Treasury, 1st Respondent and county governments;

PSC, SRC and Ministry of devolution to steer the process of reviewing the Collective Bargaining Agreement to conclusion and develop a framework to assist in collective bargaining in the public service; and

Such consultations be concluded in one month from 27th November 2014 to enable for registration.

22. The period for consultations and involvement of stakeholders has since lapsed and the Claimant has been indolent. The 2nd interested party has retained its role of advising all parties on the Collective Bargaining Agreement.

Submissions

23. The Claimant submit that they have a valid recognition agreement with the 1st Respondent dated 22nd march 2012. The challenge to the Collective Bargaining Agreement signed by the parties on the basis that the officer who signed for the 1st Respondent was not in office by 27th June 2013 and the relevant Gazette Notices were published a day after execution of the Collective Bargaining Agreement and thus the general public was not aware of the changes until notice was published.

24. A Collective Bargaining Agreement is between an employer and employee and the 1st Respondent has not changed its status in terms of employing Claimant members. Devolution should not be used to defeat the purpose of the Collective Bargaining Agreement. Under the Transition to Devolved Government Act, the Authority published Gazette Notice Vol.CXVI – No.20 on 7th February 2014 on the secondment of officers from national government to county governments. Also section 138 of the County Government Act defines which officers are on secondment from national government to the county governments and how they can revert back or remain in the service of county governments. As such, the seconded officers by the 1st Respondent to the counties have limited roles in the counties and not all doctors have been moved to county governments. As such, the Collective Bargaining Agreement between the parties herein should be registered.

25. That county governments are not the employers of doctors and therefore have no legal obligation that a Collective Bargaining Agreement be negotiated with them.

26. The Collective Bargaining Agreement is multifaceted and not only on remuneration package but other terms and conditions of work. The duty placed with the SRC is to advise with an employer and where an employer fails to seek such advice, this should not be visited upon a trade union seeking to have a Collective Bargaining Agreement registered as held in **Kenya Union of Domestic, hotels, Educational institutions, Hospitals & Allied Workers versus Kenya medical Training College [2014] eKLR**. In this case, the 1st Respondent was aware of its obligations when they signed the Collective Bargaining Agreement and the SRC only published its guidelines on negotiations on 1st July 2013 after parties had signed the subject Collective Bargaining Agreement.

27. The court has the mandate to refuse or reject the registration of a Collective Bargaining Agreement and not any other party. Section 60 of the Labour Relations Act sets out the requirements to be met and the advice of SRC is only to advise the employer but not decide on the registration of a Collective Bargaining Agreement. As held in **Said ndege versus Steel Makers Ltd [2014] eKLR**, the primary responsibility to have a Collective Bargaining Agreement registered is upon the employer and when an employer executes the Collective Bargaining Agreement it is with intention to be bound by its terms.

28. The **Respondents and 1st interested party** submit that the Collective Bargaining Agreement submitted in court by the Claimant is not concluded and contains clauses that the parties hold differing positions. Article III on doctor's rights and job entry level for intern doctors is not resolved; the clauses

on residency positions, internship and basic salary are not settled. The Claimant has since confirmed in the evidence submitted in court that there are unresolved clauses.

29. That the Labour Relations Act has defined a Collective Bargaining Agreement and section 59(5) provides that a Collective Bargaining Agreement is only enforceable upon registration by the court and is effective from the dates agreed upon by the parties. The Collective Bargaining Agreement submitted is not agreed and the effective date is not resolved by the parties to it.

30. The Respondents also submit that health services are devolved to respective county governments and the 1st Respondent is only in control of hospitals under national government and health policy. With devolution most health workers were transferred to the various counties and by operation of the law, health workers are employees of the respective county governments. The Collective Bargaining Agreement negotiated with the Ministry of Health and the Claimant was signed when health services had been devolved. The county governments were not involved.

31. The Respondents also submit that the subject Collective Bargaining Agreement was signed by an officer who had since left the 1st Respondent as permanent secretary and as such the Collective Bargaining Agreement is invalid. It has no legal force and cannot be enforced.

32. The SRC has a constitutional mandate to advise on the Collective Bargaining Agreement and such had not been sourced at the time it was signed. The advice of the SRC should be sourced before any action is undertaken and where this is not done it is in violation of article 230 of the constitution as held in **Civil Appeal No.196 of 2015 consolidated with Civil Appeal No.195 of 2015 and Civil Appeal No.203 of 2015, Teachers Service Commission versus Kenya National Union of Teachers & Others.**

33. The SRC on its part submit that Collective Bargaining Agreement signed by the Claimant and 1st Respondent is invalid and cannot be registered and it did not comply with provisions of article 230(4) (b) of the constitution. The SRC is required to give advice on all matters relating to remuneration and benefits of all public officers. The 1st Respondent as part of government is legally bound to seek advice before signing a Collective Bargaining Agreement upon confirmation of fiscal sustainability of the negotiated package and with the advice of the SRC. The process of seeking advice with the SRC is not complete.

34. The SRC published its regulations taking effect on 16th January 2013 vide Legal Notice No.2 of 2013 and the Collective Bargaining Agreement was signed on 27th March [June] 2013. Such regulations were not followed by the parties to the Collective Bargaining Agreement. Three are obvious outstanding issues unresolved in the Collective Bargaining Agreement which ought to be addressed before its registration.

35. The SRC also submit that the Collective Bargaining Agreement is invalid by application of the common law principles. There is only an intention given but there is no capacity of the parties to enter into the contract/agreement that is binding. By omitting to consult and get advice of the SRC, the 1st Respondent did not have capacity to sign the Collective Bargaining Agreement. The 1st Respondent must conform to public policy and advice of SRC for the Collective Bargaining Agreement to have the legal force and parties cannot claim any rights under the Collective Bargaining Agreement until it is registered in accordance with the law.

Determination

Whether the Collective Bargaining Agreement signed on 27th June 2013 should be registered;

Whether the 1st Respondent should meet the obligations of the Collective Bargaining Agreement signed on 27th June 2013 effective 1st July 2013 pending negotiations of a new Collective Bargaining Agreement

36. A Collective Bargaining Agreement has been defined under section 2 of the Labour Relations Act at;

“collective agreement” means a written agreement concerning any terms and conditions of employment made between a trade union and an employer, group of employers or organisation of employers;

37. Such an agreement made between an employer and trade union to have effect, must be registered with the court in accordance with section 60 of the Labour Relations Act thus;

60. (1) every collective agreement shall be submitted to the National Labour Court for registration within fourteen days of its conclusion.

(2) The employer or employer’s organisation which is party to an agreement to be registered under this section shall submit the agreement to the National Labour Court for registration.

(3) If an employer or employers’ organisation fails to submit the collective agreement to the National Labour Court as specified in subsection (1), the trade union may submit it.

(4) The National Labour Court may request the parties to a collective agreement to supply further information or make oral or written representations to it for the purposes of this section.

[emphasis added].

38. The submission of the Collective Bargaining Agreement for registration by the court is therefore mandatory. Without such registration, the Collective Bargaining Agreement has no legal effect and cannot be enforced. The Collective Bargaining Agreement must comply with all relevant laws and where in the assessment of the court the same is lacking in any component as set out under section 60(6) & (7), the court has the mandate to order compliance with the law and directives or guidelines concerning wages, salaries and other conditions of employment.

(6) The National Labour Court shall not register a collective agreement that –

(a) conflicts with this Act or any other law; or

(b) does not comply with any directives or guidelines concerning wages, salary levels and other conditions of employment issued by the Minister under the Labour Institutions Act.

(7) The National Labour Court –

(a) may register a collective agreement within fourteen days of receiving it;

(b) may refuse to register a collective agreement unless all parties to the agreement have had an opportunity to make oral representations to the Court; and

(c) shall give reasons for refusing to register any collective agreement.

[emphasis added].

39. For the Collective Bargaining Agreement to be before the court for registration, negotiations must take place before hand. Such negotiations between the employer(s) and a trade union must be held in the context that the employer has to disclose all relevant information necessary and useful for the negotiations to have effect and pursuant to the provisions of section 57(2) Labour Relations Act;

(2) For the purpose of conducting negotiations under subsection (1), an employer shall disclose to a trade union all relevant information that will allow the trade union to effectively negotiate on

behalf of employees.

40. Indeed and as submitted by the Respondents and SRC, article 230 of the constitution and the SRC regulations requires that before the Collective Bargaining Agreement is submitted with the court for registration, the employer such as the 1st Respondent must submit it with the SRC for advice and to ensure it complies with set regulations on remuneration and benefits for public officers as held by the **Court of Appeal in Civil Appeal No.196 of 2015.**

41. Have the parties complied with the constitution, the applicable law and the relevant regulations to warrant the registration of the Collective Bargaining Agreement?

42. It is common cause that the Claimant and 1st Respondent have a Recognition Agreement. It is also not in dispute that upon recognition, the parties commenced negotiations for a Collective Bargaining Agreement and subsequent there was an industrial action by the Claimant members and part of the return to work agreement was to have a Collective Bargaining Agreement in place to address the concerns of the Claimant and its members. To therefore forestall further industrial action and ensure industrial peace, the parties, with hastened steps commenced negotiations for a Collective Bargaining Agreement.

43. Recognition of the Claimant for collective bargaining was with the 1st Respondent only. There is no recognition with any other entity or employer for the process of Collective Bargaining Agreement negotiations to commence. As such, the only employer required to comply with the provisions of section 59(2) of the Labour Relations Act is the 1st respondent.

44. Parties agree that with devolution of health services, the Claimant members are now under national and county governments. As such, the Claimant should take this into account before proceeding with the registration of the Collective Bargaining Agreement as currently framed in the context of parties covered in the Recognition Agreement. However, this requirement does not change the obligations, duties and requirements already put in place with the recognition of the Claimant by the 1st respondent. That relationship stands secured and should not be defeated for any other purpose unless the parties, by mutual agreement wish to make necessary changes.

45. The 1st Respondent submitted the subject Collective Bargaining Agreement with the SRC for advice. This is confirmed by the SRC in their pleadings and submissions, that on 4th November 2013, the 1st Respondent submitted the Collective Bargaining Agreement with their office but have failed to respond to follow up questions and provision of information so as to finalise the advice required. On this basis, the 1st Respondent cannot thus claim the Collective Bargaining Agreement was executed and or signed by a non-officer and therefore should not be registered by the court. By its conduct, the 1st Respondent has demonstrated knowledge of the Collective Bargaining Agreement, has participated at various negotiation for and further by submitting the same to the SRC is in confirmation that they required the office to undertake its constitutional role and revert. In any event, gazette Notice No.9067 of 26th June 2013 was published vide Kenya Gazette Notice of 28th June 2013 taking effect from 25th June 2013. With these dates and before the Notice was published, the subject Collective Bargaining Agreement was signed by the parties to it on 27th June 2013. As such, the 1st Respondent had no leadership gap any moment. I find there was full representation and knowledge of the 1st Respondent at all material times in the negotiations for the Collective Bargaining Agreement signed on 27th June 2013.

46. However, before such signing of the Collective Bargaining Agreement, the 1st Respondent was under a duty to submit the same with the SRC for their advice in accordance with article 230(4) of the constitution. I find this is a mandatory requirement that is constitutional and the court is mandated to give the same meaning thus;

(4) The powers and functions of the Salaries and Remuneration

Commission shall be to—

(a) Set and regularly review the remuneration and benefits of all State officers; and

(b) advise the national and county governments on the remuneration and benefits of all other public officers

47. The Claimant admit that there are several clauses that were not agreed upon during the negotiations and they took the option of suspending such clauses until the SRC is able to give clear guidelines. This especially as relates to Article VI on remuneration and benefits to doctors. That where a clause is untenable by frustration and operation of the law, such can be suspended.

48. The Claimant has also submitted that the county governments do not employ doctors and therefore have no legal obligation to negotiate a Collective Bargaining Agreement. However, devolution of health services is a reality and its context is to be found under the constitution. The county governments are legal entities that carry with them the power to employ doctors or health service providers at the county level. It should therefore not be lost that the county government hold a huge source for the Claimant membership and by enjoying recognition with each county government, the outreach of the Claimant will add value to its overall mandate.

49. That aside, parties should negotiate a Collective Bargaining Agreement in good faith and by the 1st Respondent stalling the process under the belief that the officer negotiating the same on their behalf in June 2013 was a non-officer, yet such an officer had participated to a large extent in the negotiations and formulation of the Collective Bargaining Agreement is to defeat the process and the work put into the same. The office of the permanent Secretary for the 1st Respondent did not cease with the change of the office holder. To hold otherwise such is to acting bad faith. The officer holder upon vacating such office and the gazettement of a new officer, the new officer coming on board took over responsibility as the office did not change. As such, the 1st Respondent has frustrated the process leading to unnecessary costs.

50. By SRC placing the burden upon the Claimant to convene all the stakeholders so as to have a Collective Bargaining Agreement registered is a tall order and such defeats the purpose of article 41(5) in terms of entering into a Collective Bargaining Agreement for any employer and the union representing its members. The Claimant enjoys recognition with the 1st Respondent and under such, negotiations have been held with the purposes of registering a Collective Bargaining Agreement in that context.

51. To conflate issues and make it appear that the Collective Bargaining Agreement between the Claimant and 1st Respondent is impractical and cannot be completed until and unless other stakeholders are involved to negate the Recognition Agreement already in force. Such requirements amount to unfair labour practice. Where the Claimant is keen to enjoy recognition with other sector stakeholders, such should not be controlled or regulated by the Respondents or the interested parties so as to defeat claimant's rights under article 41 of the constitution.

52. The role of SRC is clear, and the role of the Claimant in terms of gaining recognition for purposes of collective bargaining is also clear. Such clarity should not be marred by each Respondent and interested party reigning in with their position as to how such recognition and collective bargaining should be controlled and or regulated so as to defeat the purpose for which the Claimant gained recognition and negotiated a Collective Bargaining Agreement with the 1st respondent.

53. However it would not help the Claimant to have an empty Collective Bargaining Agreement as it were. To register a document that will bear no fruits as the health function is devolved and majority of Claimant members or potential members are in the counties. It will aid justice, fair labour practice and effective administration of the Collective Bargaining Agreement to include the major stakeholders – county governments.

54. For this claim, and noting the issues set out above and the analysis made and in recognition of all

aspects addressed in the subject Collective Bargaining Agreement, I find there are incomplete parts that should be finalised before registration. I also find the Respondent has not acted in good faith and has frustrated the process by failing to provide relevant and necessary information both due to the Claimant and the SRC, such defeats the purpose of article 41 of the constitution. I also find that the parties had good intentions in setting out the effective date of the Collective Bargaining Agreement as at 1st July 2013 and noting the issues pending completion, where the effective date is not agreed upon negotiations, the court, now seized with the matter shall give directions.

In conclusion therefore, noting the above analysis and issues set out, it is hereby necessary and just for the court to issue timelines within which parties shall adhere to and ensure the finalisation of the Collective Bargaining Agreement within the recognition between the Claimant and the 1st Respondent and submission with the court for registration within 90 days. For this purpose, the 1st Interested Party, Ministry of Labour is a necessary party to give technical advice. I therefore order and direct as follows;

- 1) The parties shall address themselves to the Collective Bargaining Agreement negotiated by the Claimant and 1st Respondent as of 27th June 2013;**
- 2) The Claimant and the 1st Respondent shall convene to resolve clauses/articles not agreed upon pursuant to section 57(1) Labour Relations Act in the next 30 days;**
- 3) The Respondents shall work with the interested parties in addressing the information gaps required for purposes of getting the necessary and relevant advice with regard to the Collective Bargaining Agreement (1) above within 45 days;**
- 4) The Respondents in consultation with the 1st interested party shall submit with the court a Collective Bargaining Agreement for registration in terms of section 60(2) Labour Relations Act on or before the lapse of 90 days;**
- 5) Where no action is taken as above, on the 90th day from this date, the Claimant shall move the court for registration of the negotiated Collective Bargaining Agreement ;**
- 6) No party shall act to frustrate the Claimant pursuant to orders above;**
- 7) As the parties are engaged in a long term relationship, no orders as to costs.**

Orders accordingly.

Delivered in open court at Nairobi this 6th day of October year 2016.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Lilian Njenga

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