



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 111 OF 2013

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

-VERSUS-

**BARAGWI FARMERS CO-OPERATIVE SOCIETY
LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 20th March, 2015)

JUDGMENT

The claimant filed a statement of claim on 03.10.2013. The respondent filed the memorandum of defence on 16.04.2014. The matters in dispute related to negotiations between the parties about the effective date of the collective agreement and levels of payment due to the workers in terms of overtime, annual leave allowance, housing allowance, provident fund, terminal benefits, salaries and wages, commuter allowance and the effective date of the pay increment.

The parties consented to filing of a report on the dispute by the central planning unit of the Ministry of Labour and the relevant report was filed on 19.11.2014. The parties filed a partial consent on 17.12.2014 for a partial judgment in the following terms:

- a) Commuter allowance Kshs. 1,000.00 per month.
- b) House allowance at 18% of the basic salary subject to a minimum of Kshs. 1,000.00 per month.
- c) General wage increase :(i) 1st year 10 %;(ii) 2nd year 10%; and (iii) 3rd year 10%.
- d) By further consent parties to proceed by way of written submissions on the outstanding issues of effective date and minimum engagement or entry wages.

This judgment is to determine two issues in terms of (d) above and the parties having filed and served their respective submissions.

The 1st issue for determination is about the effective date of the agreed terms of service and as set out in the partial consent between the parties. The claimant has submitted that the review of the collective agreement was due in October 2001. The claimant has further submitted that the recognition agreement was signed between the parties on 30.08.2012 and clause 5 thereof provides that the parties agree to adopt all existing terms and conditions of service then in force (as at 30.08.2012). The claimant then concluded that it is entitled to demand effectiveness from 2001 but in the interest of good industrial relations, the

claimant would allow the respondent a grace period of 8 years so that the effective date is 01.01.2009 being the time the employees joined the union.

For the respondent it was submitted that the parties concluded a recognition agreement on 30.08.2012. It was further submitted that under section 54 of the Labour Relations Act, 2007, conclusion of the recognition agreement was a precondition to negotiating a collective agreement. Thus, the respondent submitted that the effective date should be 30 days from the date of this judgment, allowing parties to file the collective agreement in court. Further, for the respondent it was submitted that back dating of the collective agreement would result into substantial arrears whose payment would be punitive as against the respondent. The respondent pleaded that the effective date should be 30 days from the date of the judgment.

The court has considered the rival submissions. The court considers that the general rule is that a collective agreement is effective for the period specified in the agreement. The parties in this suit appear to have submitted on effective date of the collective agreement rather than the effective date of the agreed terms of service as recorded in court as partial judgment by consent. The partial consent was signed on 17.12.2014 and recorded in court the same date. The respondent has submitted that it lacks reserves to pay backdated workers' benefits. The court has considered the circumstances of the case and the need to conclude a collective agreement and to implement the agreed pay increments without unjustified hardships to the parties. Accordingly, the court considers that 01.01.2015 is an appropriate effective date for the agreed payments, the arrears to be paid by 01.05.2015 and in default interest to be payable at court rates from 1.01.2015 till full payment. The parties will by 01.05.2015 conclude and register in the court a collective agreement reflecting the agreed terms as recorded and determined by the court.

The 2nd issue for determination is to set the minimum or entry wages or salaries. The respondent has submitted that the respondent's factories are located in rural areas and the minimum wages for all other areas as per the general order is applicable. The claimant has submitted that the minimum entry points should be the stipulated minimum wages for municipalities. The only dispute is whether the factories in which the claimant's members are deployed are in rural or urban areas. The report by the Ministry of Labour filed in court on 19.11.2014 at paragraph 1.2 states that the respondent's case is that 95% of the workers are deployed in factories in rural areas, except that the respondent's head office is in a municipality or urban area. In absence of any other material before the court, the court finds that the entry points shall be the minimum wages for all other areas as per the applicable general order for all staff, and except those deployed in respondent's head office to be as per the general wage order for municipalities.

In conclusion, judgment is entered with orders:

- a) That 01.01.2015 shall be the effective date for the agreed payments, the respondent to pay the arrears by 01.05.2015 in default interest to be payable at court rates from 1.01.2015 till full payment.
- b) That the entry points shall be the minimum wages for all other areas for those deployed in factories, and minimum wages for municipalities for those deployed in the respondent's head office as per the applicable general wage order, with 01.01.2015 as due date for implementing 1st year agreed increments.
- c) The parties shall, by 01.05.2015, conclude and register in the court a collective agreement reflecting the agreed terms as recorded and determined by the court in this judgment.
- d) The parties to bear own costs of the suit.

Signed, dated and delivered in court at Nyeri this **Friday, 20th March, 2015.**

BYRAM ONGAYA

JUDGE