



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT OF KENYA AT NAIROBI**  
**CAUSE NO. 203 OF 2014**  
**KENYA UNION OF COMMERCIAL**  
**FOOD & ALLIED WORKERS.....CLAIMANT**  
  
*VERSUS*  
**TUSKER MATTRESSES LTD..... RESPONDENT**

Mr. Nyumba for Claimant

Mr. Ouma for Respondent

**JUDGMENT**

1. This dispute is on alleged refusal/failure by the Respondent to implement Clause 1(B) General Wage Increase of the Collective Bargaining Agreement (CBA) between the parties.
2. The parties have a valid Recognition Agreement signed on 19<sup>th</sup> October, 2013 and concluded the first CBA on 14<sup>th</sup> November 2013, and which came into effect on 1<sup>st</sup> March, 2013 for a period of two years.
3. The CBA was registered by the court and was entered into the Register of CBAs as RCA No. 273 of 2013 on 6<sup>th</sup> December, 2013.
4. In the CBA, parties agreed on Basic Minimum Wages under Clause 1(A) as set out in the Memorandum of Claim. This was with a rider *“provided that the Basic Minimum Wage shall always be Ksh.180.00 above the Gazetted Minimum Wage.”*
5. It was also agreed vide Clause 1(B) – Wage Increase, as follows;  
  
*“All unionisable employees on the employment of the company, who are confirmed in their appointment as at 28<sup>th</sup> February, 2013 shall receive a wage increase of 10% to cover the first year and a further 11% from 1<sup>st</sup> March, 2014 to cover the second year.”*
6. As negotiations were proceeding, Government announced 14% General Wage Increase under Regulation of Wages General (Amendment) Order 2013. This increase was gazetted under Legal Notice No. 197 attached and marked BMK4 to the Memorandum of Claim.
7. As a result, new statutory wages as at 1<sup>st</sup> March, 2013, are set out under paragraph 41 of the

## Memorandum of Claim.

8. The Claimant states that the agreed basic minimum wage in the CBA, which came into effect on 1<sup>st</sup> March, 2013 was superior to the statutory minimum in Wage General Order as at 1<sup>st</sup> May, 2013.

### Wrongful Implementation

9. The Respondent while implementing the CBA;

- i. Loaded 10% General Wage Increase on employee's wage obtaining as at 28<sup>th</sup> February, 2013 or on Statutory Minimum Wage, the Regulation of Wages (General) (Amendment) Order, 2012
- ii. adjusted all the wages to be in conformity with the General Wage Order for May, 2013
- iii. paid each employee a further Ksh.180.00 as per Clause 1(A) of the CBA.

10. It is noteworthy the adjustment and payment of the salaries prior to the May, 2013, Order was done prior to the conclusion of the CBA. In effect the employees only benefitted from Ksh.180.00 only.

11. The Claimant states that this implementation was wrongful in that;

- i. By 1<sup>st</sup> March, 2013, the basic minimum wages were as follows;

Category	Amount(Kshs.)
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1.	9,961.00
2.	10,743.30
3.	13,381.00
4.	15,245.00
5.	16,783.00
6.	22,251.00

- ii. That the basic minimum wage took effect where it was higher than the agreed wage.

12. Therefore wages which by 1<sup>st</sup> March, 2013 were below the agreed basic minimum wage, would be brought to the new basic minimum wage as agreed in the CBA and then add the 10% wage increase agreed upon.

13. The Respondent did not therefore implement Clause 1(B) of the CBA properly. This resulted in an Industrial Action and the dispute was referred to a Conciliator. The Conciliator made a report with the following recommendations;

- i. the increase of 10% wage increase should be on the basic salary agreed on in the CBA on wages paid on February, 2013 as starting point
- ii. where an employee was earning below the basic entry point agreed on the Schedule Clause I(A), then such employee's salaries should be adjusted to the entry point and a 10% general wage increase given to him/her
- iii. if the current General Order is more favourable than the CBA the salaries should be adjusted to reflect the same and all the workers affected be paid accordingly.

14. The Claimant accepted the findings and recommendations by the Conciliator as a basis of settlement on 3<sup>rd</sup> February, 2014.

15. The Respondent rejected the conciliator's Findings and Recommendations stating that this matter required court's intervention.

### Response

15. The employer filed a Statement of Response on 13<sup>th</sup> May, 2014.
16. The Respondent confirms the chronology of events as set out by the Claimant and only differs on the matter of implementation of the CBA and the Regulation of Wages (General) Amendment Order, 2013 as follows;
- a. as from 1<sup>st</sup> March, 2013, all unionisable employees confirmed as at 28<sup>th</sup> February, 2013 received a wage increase of 10% as per Clause 1(B) of the CBA to cover the first year. This was reflected in their November, 2013 payroll.
  - b. as from 1<sup>st</sup> May 2013, the Respondent implemented the General Wages Order, 2013 and adjusted the wages of all the employees who happened to be below the statutory minimum wage by dint of the Regulation of Wages (General) (Amendment) Order, 2013, thereby raising it to the statutory minimum.
17. The Respondent's implementation was therefore proper and lawful.
18. The Respondent submits that consideration must be placed on the effective date of the CBA which was 1<sup>st</sup> March, 2013 whereas the effective date of the General Wages, Order 2013, was 1<sup>st</sup> May, 2013. It follows therefore that the Government increase did not impact the implementation of the CBA until when it became effective and same could not be effected retroactively.
19. Such an interpretation would cause the Respondent great loss at the same time benefit the Claimant unfairly.
20. The relevant statutory minimum wages order in force as at the time of conclusion of the CBA on 1<sup>st</sup> March, 2013, was Legal Notice No. 71 of 1<sup>st</sup> May, 2012.

### **Determination**

21. It is the court's considered view that the interpretation of the situation by firstly the Claimant and subsequently by the Conciliator was erroneous and contrary to the provisions of the CBA and the General Wages, Order 2013.
22. The interpretation by the Respondent is the correct one and the court has upon considering all the circumstances of the case agreed with it.
23. Consequently, since the effective date of the CBA was 1<sup>st</sup> March, 2013 and that of the Regulation of Wages (General) (Amendment) Order, 2013 was 1<sup>st</sup> May, 2013, the increase agreed upon in the CBA for the 1<sup>st</sup> year did not have to take into consideration the minimum wages pronounced in the said General Wages Order, 2013, before it became effective on 1<sup>st</sup> May, 2013.
24. Any unionisable employee, whose wage was below the new set minimum wage stood to benefit from an adjustment subsequently effective 1<sup>st</sup> May, 2013.
25. The Respondent made the said adjustments subsequently in compliance with the General Wages, Order 2013.
26. The suit by the Claimant is dismissed with costs to the Respondent.

**Dated and Delivered at Nairobi this 17<sup>th</sup> day of April, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**