



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 50 OF 2015

KENYA GAME HUNTING & SAFARIS WORKERS UNION.....CLAIMANT

VERSUS

LEWA WILDLIFE CONSERVANCY.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 31st July, 2015)

JUDGMENT

The claimant filed the memorandum of claim on 23.03.2015. The claimant prayed for wage increase at 13% for 1st year and 13 % for 2nd year. For overtime the claimant prayed for fixed rate of 38% for fencers and general security and 40% for the gatemen.

The memorandum of response was filed on 11.04.2015. The respondent submitted that the workers be awarded pay increase at 6% for 1st year effective 1.01.2014 and 0% for 2nd year effective 1.01.2015. For overtime the respondent pleaded that its management agreed upon a fixed rate of 38% for all workers and not to be reviewed in future. The aim was to make the payment uniform for all workers.

The only issue before the court is to determine the wage increase and the overtime payable in view of the materials before the court. Those are the two items that the parties failed to agree upon during renegotiation of the collective agreement.

For the overtime the court finds that the respondent's position that uniform pay to all workers would be a good labour practice as it will enhance motivation of the staff across the cadres. The respondent had agreed to pay 38% to all workers as a fixed rate every month whether the employees are on leave or they have not in fact performed the overtime. The court has considered that some of the employees namely the gatemen are already earning 40% and a downward drift would demoralise the workers already at 40% fixed rate for overtime. In furtherance of uniformity as a good labour practice, considering the 38 % the respondent had agreed upon and in view of the 40 % already paid to the gatemen, the court returns that overtime to all workers will be paid at the fixed rate of 40% and the parties will not renegotiate this unless after 31.12.2019. While making this decision the court has taken into account the respondent's legitimate position that all workers should be treated equally as envisaged in Article 41 of the Constitution as a good practice.

For the wage increment, in view of the economic analysis report, the respondent has submitted that the workers be awarded 9% spread across the 2 years. The court has considered the effect of the fixed overtime rate awarded to all employees and finds that 6% wage increase for all workers as already agreed

upon by the employer for 1st year effective 1.01.2014 will be fair. For the 2nd year effective 1.01.2015 the court considers that 4% wage increase for all workers will be fair. While making the awards the court has considered the following factors as they appear on record:

- a. The consumer price index for period 2010-2013 subject of the compensation for the workers was put at 8.9% for the 2 years or 4.45% per year as per the economic analysis report filed.
- b. The claimant agreed to pay 6% for the 1st year and the report states the respondent was will to offer 3% for the 2nd year. Thus the respondent's capacity to pay has been taken into account.
- c. The fixed rate for pay of overtime on monthly basis will generally enhance each worker's income.
- d. In view of the unhealthy or declining financial performance on the part of the respondent, the claim for 26% for 2 years or 13 % per year on the part of the claimant may render the respondent unable to pay, a situation that is not in the best interests of the parties in terms of sustainable incomes, productivity or service delivery, and the general future well being of the parties.
- e. The reported challenges that are facing the industry and in particular the respondent including unpredictable funding, poaching, donor preferences to fund community projects rather than administrative costs which include lower tourists visits due to security concerns such as terrorism threats and recent outbreaks of trans-boundary diseases such as ebola.
- f. The parties were renegotiating their 6th collective agreement and this was the first time they had to come before the court so that the respondent as an employer had previously fully cooperated and therefore preservation of parties' cordial negotiating environment has to be promoted and recognised by the court. In that regard the court considers that each party will bear own costs of the suit.

The court considers that the awarded rates for salary increment and for overtime will respect the respondent's ability to pay and enhance workers' motivation to redouble their efforts in performance. In conclusion judgment is entered for the parties for:

1. 6% wage increase for 1st year effective 1.01.2014, and for the 2nd year effective 1.01.2015, 4% wage increase for all unionisable workers.
2. Overtime to all workers to be paid at the fixed rate of 40% and the parties will not renegotiate this item unless after 31.12.2019.
3. Each party to bear own costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 31st July, 2015.**

BYRAM ONGAYA

JUDGE