



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 122 OF 2013

(Formerly Cause No. 191 of 2013 at Nairobi)

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS.....CLAIMANT

VERSUS

KANGIRI FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT

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

JUDGMENT

The claimant and the respondent concluded a recognition agreement which became operational on 17.07.2012. On 31.07.2012 the claimant forwarded a proposed collective bargaining agreement (CBA). The parties agreed upon certain of the clauses of the CBA and disagreed upon other clauses.

The matter went for conciliation but parties failed to arrive at an agreement.

The certificate of unresolved dispute between the parties dated 31.10.2012 and issued under section 69(a) of the Labour Relations Act, 2007, states that the issues in dispute regard to negotiation of:

- a. Leave travelling allowance.
- b. Preamble.
- c. House allowance.
- d. Safari and subsistence allowance.
- e. Other medical benefits.
- f. Minimum wages.
- g. General wage increase.

The claimant filed the memorandum of claim on 11.02.2013 setting out its proposals on each of the issues in dispute and seeking judgment in terms of the proposals together with the costs of the suit.

The respondent filed the response to the memorandum of claim on 24.06.2013 through Kamau Kuria & Kiraitu Advocates. The respondent enumerated its proposals and prayed that the suit be dismissed with costs.

The economic analysis report by the Ministry of Labour Social Security and Services dated 28.04.2015 was filed in the suit on 04.05.2015. The parties filed and served their respective final submissions.

The court has considered the pleadings, the economic analysis report and the parties' respective final submissions.

The only issue in dispute is for the court to make a finding on the disputed clauses of the CBA between the parties. The court makes findings as follows:

1. The claimant has prayed that the preamble states thus, “ **Kangiri Farmers Society Limited and Kenya Union of Commercial Food and Allied Workers meeting in free and voluntary association have agreed and entered into the following agreement negotiated by a joint negotiating committee in respect of all unionisable employees of the Society**” The respondent has not made any particular prayer to oppose the wording of the preamble as suggested and the court finds that the claimant is entitled to the wording as proposed.
2. The claimant has proposed **Kshs.1, 500.00** in clause 11(iv) for annual leave travelling allowance having dropped earlier demands of a month’s gross pay as earlier demanded during the negotiations. The court has considered the concession on the part of the claimant and that the pay is one off on annual basis. The court finds that the claimant’s proposal is reasonable to partially facilitate the workers’ travel expenses during annual leave as will be incurred and is awarded accordingly.
3. The claimant has proposed **15% of basic monthly salary** for house allowance in clause 12 of the CBA. The respondent has opposed the claim because the workers stay near the workplaces. The guiding law is section 31 of the Employment Act, 2007. The employer is required to provide reasonable housing accommodation or to pay reasonably for the rent. In this case the respondent has not stated that the workers are provided reasonable housing accommodation. The court has been guided with the minimum wage orders which fix house allowance at not less than 15% of the basic pay and find that the claimant’s proposal is found reasonable and is awarded accordingly.
4. For safari and subsistence allowance in clause 13 of the CBA the claimant has proposed Kshs. 1,400.00 within district and Kshs. 2000.00 for outside the district to meet the costs of lunch, supper and boarding for an employee assigned duties away from their normal work stations. The respondent has proposed Kshs. 600.00 and Kshs. 900.00 respectively for within and outside district. The court has taken judicial notice of the prevailing costs in that regard, the ability of the employer to pay and the need for reasonable care the employees deserve in such circumstances and consider that **Kshs. 1000.00**(lunch 250, supper 250 and boarding 500) for within district and **Kshs. 1,500.00** (lunch 250, supper 250 and boarding 1000) for outside district for safari and subsistence allowance will be reasonable and the same is awarded accordingly.
5. For medical allowance the claimant proposed Kshs.1, 500.00 per month and the respondent Kshs. 500.00 per month. The duty of the employer under section 34 (1) of the Employment Act, 2007 is to ensure the provision of sufficient and proper medicines for the employees during illness and if possible, medical attendance during serious illness. The duty at minimum does not apply where medical treatment is provided free of charge by the government or under any insurance scheme established under any written law which covers the employee as per section 34(4) of the Act. The court has considered that the respondent, at minimum, shall comply with the statutory requirements to emplace its employees on the National Health Insurance Fund (NHIF) being the statutory health scheme. The court has further considered that the respondent shall comply with the provisions of the Employment (Medical Treatment Rules) - L.N. 157/1977. Thus in such circumstances, the court awards **Kshs.500.00** for medical allowance per month as proposed for the respondent.
6. On minimum wages the court has considered the parties pleadings, submissions and the economic analysis report. In making the award the court must bear into account the employer’s capacity to pay, the levels of productivity and the need to accord employees reasonable living wages to afford their economic and social needs. The respondent has submitted that it has suffered losses in 2011, 2012 and 2013 due to declining coffee production, fluctuation of coffee prices at the world market, poor quality of coffee, high costs of coffee production, theft of coffee produce at its factories, and insufficient working capital occasioning high indebtedness due to loan arrangements. The economic analysis report put the rise in the cost of living indices at the consumer price index (CPI) of 17.45% for the period July 2012 to January 2015. The report stated that the respondent’s financial position was not healthy for 2010 to 2013 and serious strategies were required to keep the respondent in business. The wage differential between the management and the unionisable staff as submitted for the claimant was that on average the unionisable employee earned Kshs. 8012.00 and the management employee Kshs.10, 979.00 per month in 2010-2011. The court has

considered the cost of living indices at a CPI of 17.45% and the respondent's prevailing financial position. The parties were negotiating their first CBA to run from 1.10.2012 to 30.09.2014. The claimant submitted that the workers be awarded 15% for 1st year effective 1.10.2012 and 15% for second year effective 1.10.2013. It was submitted that the workers had worked hard to positively turn around the respondent's performance as shown by the declining losses in 2011-2013. Further it was submitted that the CPI for 1st year 2012 was 8.73% and in 2013 was 8.73% as spread out per the economic analysis report so that the workers deserved the increment as claimed as it was coming belatedly. The court has considered the need for motivated workers and the likely resultant increase in productivity that may flow from improved salaries. The court has considered the belated negotiations, the need to cushion the respondent against further losses reported over the period and that the parties were negotiating their 1st collective agreement. Taking all the circumstances into account, the claimant's members are awarded **a pay rise of 24% over a period of two years spread over the period being 12% as at 1.10.2014 and 12% effective 1.10.2015**. While making that award, the court has considered that the parties were negotiating the first CBA and in view of the respondent's financial position the award will hopefully afford the respondent chance to improve its financial performance while giving the workers reasonable motivation to meet their targets in the prevailing circumstances of the case. It is also the view of the court that the award will hopefully afford parties reasonable chance and time to negotiate their next CBA without recourse to this court as the best labour practice. Thus the CBA will run from 1.10.2014 for a term of 2 years ending on or about 1.10.2016.

In conclusion judgment is entered for the parties for:

1. The parties to conclude a CBA and to file in court for registration by 1.09.2015 in terms of the findings and awards as set out in this judgment including:
 - a. the preamble stating thus, “ **Kangiri Farmers Society Limited and Kenya Union of Commercial Food and Allied Workers meeting in free and voluntary association have agreed and entered into the following agreement negotiated by a joint negotiating committee in respect of all unionisable employees of the Society**”;
 - b. **Kshs.1, 500.00** in clause 11(iv) for annual leave travelling allowance;
 - c. **15% of basic monthly salary** for house allowance per month;
 - d. **Kshs. 1000.00**(lunch 250, supper 250 and boarding 500) for within district and **Kshs. 1,500.00** (lunch 250, supper 250 and boarding 1000) for outside district for safari and subsistence allowance;
 - e. **Kshs.500.00** for medical allowance per month; and
 - f. **pay rise of 24% over a period of two years spread over the period being 12% effective 1.10.2014 and 12% effective 1.10.2015**.
2. The CBA to run from 1.10.2014 for a term of 2 years ending on or about 1.10.2016.
3. Subject to orders in this judgment the other provisions in the CBA to prevail as agreed between the parties.
4. Parties to bear own costs of the suit.

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

BYRAM ONGAYA

JUDGE