



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 816 OF 2012

**BETWEEN**

**KENYA CHEMICAL AND ALLIED WORKERS**

UNION.....  
CLAIMANT

**VERSUS**

LEATHER LIFE EPZ LIMITED.....  
RESPONDENT

*Rika J*

*CC. Leah Muthaka*

*Mr. Jackson Mueke Industrial Relations Officer, for the Claimant*

*Mr. Mutinda instructed by M. Mutinda & Associates, Advocates for the Respondent*

ISSUE IN DISPUTE: WAGE INCREMENT

AWARD

1. This is an economic dispute, initiated by the Claimant Union through a Statement of Claim, filed on 15<sup>th</sup> May 2012. The Respondent filed its Statement of Response on 20<sup>th</sup> June 2012. The Report of the Central Planning and Monitoring Unit [CPMU), was filed on 6<sup>th</sup> May 2013. The dispute was heard by way of oral submissions made by Mr. Mueke for the Claimant Union and Mr. Mutinda for the Respondent, on the 9<sup>th</sup> July 2013. Parties were advised Award would be delivered on notice.
2. The Claimant submits that Parties negotiated the Collective Bargaining Agreement with the Respondent, to cover the period between 1<sup>st</sup> April 2011 and 31<sup>st</sup> March 2013. They agreed on all collective bargaining subjects, except on wage increment. Following the deadlock, the Claimant reported the existence of a trade dispute to the Minister for Labour under Section 62 of the Labour Relations Act Number 14 of 2007, on 1<sup>st</sup> December 2011.
3. The Minister appointed Mr. J. Makaa as the Conciliator, who then scheduled conciliation meetings, to which the Respondent did not submit. The Conciliator issued a certificate of disagreement under Section

69 of the Labour Relations Act, signifying the dispute remained unresolved, and paving the way for the current adjudicatory process by the Court.

4. The Claimant demanded for wage increment at the rate of 40% for the 1<sup>st</sup> year, and 25% in the second year. This was revised down to Kshs. 25% for the 1<sup>st</sup> year and 25% for the 2<sup>nd</sup> year, during the Parties' negotiations. The Respondent did not accept either proposal, instead offering wage increment to its Unionisable Employees, at 6% for the 1<sup>st</sup> year and 10% on the 2<sup>nd</sup> year. This was the genesis of the deadlock.

5. The Claimant argued that 25% increment in each of the 2 years, would result in an increment of Kshs. 2,415 per month in the 1<sup>st</sup> year and Kshs. 3,019 in the 2<sup>nd</sup>, for the lowest paid cadre of employees. It would see the highest earners get an increment of Kshs. 5,707 in the 1<sup>st</sup> year and Kshs. 7,133 in the 2<sup>nd</sup> year. These were minimal increments, seen against the prevailing cost of living and the erosion of the workers' purchasing power.

6. The cost of living as published by the Government of Kenya as of 1<sup>st</sup> April 2011 was at 18.16%, the Consumer Price Indices stood at 19.45%, while the Annual Average Inflation was given at 19.72%. The purchasing power of the Worker had been reduced to zero, placing the Worker and his family in financial peril. The Claimant took into consideration all factors relevant in wage determination in arriving at the proposal for 25% increment in each of the 2 years. The Respondent is operating well, and is not hampered by lack of raw materials as held by the Respondent. Lack of raw materials in any event, would not be a justification to continue paying the Workers below the minimum wage. The Claimant prays the Court to reject the proposal made by the Respondent and uphold 25% wage increment in each of the 2 years.

7. The Respondent's position is that the proposal made by the Claimant constitutes untenable demand. The Respondent inherited the business from Kenya Vegetex [EPZ] Limited, together with the current staff. Vegetex was placed under receivership, and had enormous liabilities. These were inherited by the Respondent. The Respondent has a huge responsibility in balancing its costs and revenue.

8. The Respondent submitted it pays the Workers in accordance with the minimum wage order. To go beyond the rates currently applicable would endanger the Respondent's sustainability as a business and be counterproductive to the Workers. When the Government gave 10% wage increment in 2011, the Respondent granted its Workers 18%, which was 8% above the minimum prescribed by the Government.

9. Workers enjoyed other benefits such as free lunch, uniforms, insurance, safety gear, staff loans and training. The proposal by the Claimant was unworkable because the Respondent is heavily indebted to the PTA Bank. The Respondent granted the Workers 12.5 % wage increment starting from 1<sup>st</sup> April 2012.

10. The Respondent told the Court that its licence for raw materials was rejected by the Kenyan Authorities, and it was compelled for long, to source raw materials from Tanzania. The Wage Bill was met outside the Respondent's production. The CPMU Report placed the cost of living at 16%. The Respondent offered the Workers 6% in the 1<sup>st</sup> year and 10% in 2<sup>nd</sup>, which is within the Wage Guidelines. The demand by the Claimant is unsustainable. The wages paid to the Workers are almost commensurate with the minimum wage. Disparity is minimal. The Respondent prays the Court to reject the demand by the Claimant, and approve wage increment as proposed by the Respondent at a total of 16 % for the 2 years.

11. The Report by CPMU shows the Respondent employed 28 unionisable employees as of the year 2012, with an annual wage bill of Kshs. 5,787,600. The Profit/ (Loss) Account indicated the Respondent registered Net Profit of Kshs. 9.5 million in 2009; Net Profit of Kshs. 15.4 million in 2010; and Net Profit of Kshs. 13.1 million in 2011. Audited Accounts for 2012 were not availed at the time CPMU compiled the Report. The overall view of the CPMU of these Financial Reports is that the performance for the period under review was healthy, and needed to be maintained and improved.

12. CPMU confirmed the Respondent experienced various challenges such as the lack of raw material in

Kenya. There were high costs of production and inputs. The Respondent was compelled to source raw material from Njombe in Tanzania, over 1,500 Km from its factory at Athi River in Kenya. Licence to import raw material was rejected in 2012. The Respondent faced the challenge of cost of finance and penalty on delayed remittances.

14. The Report states that the Claimant Members lie in the Lower Income Group, and the Nairobi Lower Income Group Increases in Consumer Price Indices would apply to them. In April 2011, the CPI under this category was 121.32 and in April 2013, 141.17, with the percentage increase of 16.36%. This percentage was sourced from the Kenya National Bureau of Statistics. The CPI total entitlement would be 16.4% over the 2 years, or 8.2% per year.

15. Adopting the proposal by the Claimant of 25% increment in each of the 2 years would result in an additional wage bill of Kshs. 3.2 million. The Respondent's proposal of 16% increment for the whole 2 years would incur the Respondent an additional wage bill of Kshs. 960,741. Increment strictly based on the CPI would have the Respondent meet an additional wage bill of Kshs. 988,082 in the 2 years. The duration of the CBA in dispute has already expired, and Parties should be negotiating another CBA, effective from 1<sup>st</sup> April 2013. The only issue that has prevented the Parties from executing their first CBA is the issue under consideration.

#### *The Court Finds and Awards:-*

16. Living Wages empower Workers whose wages are constrained by the excessive market power of their Employers. Under Section 48 of the Labour Institutions Act, the minimum rates of remuneration or conditions of employment established in Wages Order constitute a term of employment of any Employee to whom the Wages Order apply, and may not be varied by agreement.

17. If the contract of an Employee to whom a Wages Order applies provides for the payment of less remuneration than the statutory mechanism, or does not provide for the conditions of employment prescribed in the Wages Regulation Order, or provides less favourable conditions of employment, then remuneration and conditions of employment established by the Wages Order shall be inserted in the contract in substitution for those terms.

18. The Wage Orders fix the wage floors. Collective Bargaining between Employers and the Workers' Representatives on wage increment aims at fixing the cost of labour above the market benchmark, this benchmark being the minimum wage fixed under the Wage Orders. Traditionally, the Government has set the wage floor annually, during the May Day occasion, the last which was 14% minimum wage raise granted in May 2013 announced by President Uhuru Kenyatta. In seeking to move beyond the benchmark regulated by the Government, Employers and Employees examine the compensable factors within the workplace, and are guided by economic indicators. The Court, whenever called upon to intervene in economic disputes is similarly guided by the relevant compensable factors, and economic indicators. This exercise is aided by the Central Planning and Monitoring Unit [CPMU] which acts as the Secretariat to the Industrial Court, and is manned by Economists from the Treasury residing at the Ministry of Labour.

19. Wage increment aims at empowering Workers by increasing their purchasing power. It has been argued that this contributes in improving the nutrition and human development of the Workers, with the result that productivity at their workplace is enhanced. Another effect of improved purchasing power is stimulation of labour demand. In determining the proper wage increment the Court looks at all these factors, within the parameters defined by the Wage Guidelines. Caution must be exercised not to force the cost of labour way above the market benchmark, as the downside to improved productivity and fair remuneration, is collapse of businesses and loss of employment. It is always a delicate balance.

20. The Respondent is a registered Company, whose main business is the extraction of wattle tree barks, to produce a product known as solid powder. It is based at Athi River Industrial District. At the relevant time, it employed 28 Unionisable Employees. The Claimant is a registered Trade Union, representing

Unionisable Employees in Chemicals and Allied Industries. The Parties have a Recognition Agreement, but are yet to conclude a CBA, the first one having been delayed by this single issue of wage increment.

21. The Major compensable factors in wage adjustment are-

- **Rise in the Cost of Living.**
- **Improved labour Productivity.**

The first factor endeavours to restore to the Workers, the purchasing power of basic consumer goods and services. The purchasing power is normally eroded by inflation, during the lifespan of an outgoing CBA. The Parties did not conclude the first CBA, but agreed for the purpose of their negotiations, that the effective date would be 1<sup>st</sup> April 2011 to 31<sup>st</sup> March 2013. As suggested by CPMU, the period of compensation in respect of the rise in cost of living is 1<sup>st</sup> April 2011 to 31<sup>st</sup> March 2013. The Claimants' Members belong to the Lower Income Group. The Consumer Price Indices for Nairobi Lower Income Group stood at approximately 16.4%.

22. Wage Guideline Number 2 provides for compensation on improved labour productivity. The Workers' must have a share of the wealth created in the business during the period in question. The Respondent made Net Profits of Kshs. 9.5 million in 2009, Kshs. 15.4 million in 2010, and Kshs. 13.1 million in the year 2011. The CPMU was not able to obtain the Report for the year 2012. These were healthy profits, and despite the Respondent having acquired the business through a receivership and having inherited liabilities, there is no suggestion that the business cannot meet additional wage bill and remain profitable.

23. The Claimant demands 25% wage increment in the first year, and 25 % in the second year. This would raise the Respondent's wage bill by Kshs. 3.2 Million. The Respondent proposes a total of 16% raise over the 2 years, which would create an additional wage bill of Kshs. 0.96 Million. Adopting the CPI of 16.4 % would average at 8.2% raise in the first year and a similar 8.2% in the second year, resulting in an additional wage bill of Kshs. 0.98 Million over the period. The Court is persuaded compensation is merited under both factors. The CPI rate must be seen together with the improved productivity

24. The Claimant submits its Members have been receiving wages below the statutory wage floor. The Respondent did not give evidence to contradict the Claimant on this. Instead, Mr. Mutinda submits that wages paid to the Claimant's Members are almost commensurate with the minimum wages and disparity is minimal. This should not be the case, because as discussed above, the minimum wage set by the law is meant to be the wage floor, from which the Employer cannot deviate. There should be no disparity. Parties cannot contract below the wage floor, because it forms basic standards of employment. There should be no minimal disparity as submitted by the Respondent.

25. The Respondent has challenges, and the role of the Court is to ensure these are not compounded by unreasonable wage increments. The Respondent should, as should all Employers realize however, that it is in their own interests to negotiate and agree with Workers on the subject in good time, and within the collective bargaining forum. Delay or Court imposed settlement means the wages are paid in arrears, even as Parties sit down to evaluate the changes in compensable factors over the next collective bargaining period, and determine new increment percentages. Payment in arrears destabilizes progression in the cumulative profitability curve.

*Against this background the Court Awards:-*

- a. ***The Respondent shall in the first instance, pay the Claimant's Members who may have received wages below the minimum wage, any difference in wages, between what was actually paid to the Workers and what was prescribed in the prevailing Wage Orders for the period 1<sup>st</sup> April 2011 to 31<sup>st</sup> March 2013.***

- b. ***Having adjusted the wages to meet the requirement of the statutory minimum wage, the Respondent shall pay the Claimant's Members wage increment based on adjusted figures in [a], at the rate of 18 % in the first year, and 21% in the second year, effective from 1<sup>st</sup> April 2011 to 31<sup>st</sup> March 2013.***

Dated and delivered at Nairobi this 25<sup>th</sup> day of February 2014

James Rika

Judge