



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 448 OF 2010

(Before D.K.N. Marete)

UNION OF KENYA NATIONAL RESEARCH AND ALLIED

INSTITUTES STAFF OF KENYA (UNRISK).....CLAIMANT

Versus

KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).....RESPONDENT

JUDGEMENT

This dispute arises out of a ruling of this court delivered on 3rd October, 2013 where the court in the penultimate made the following orders:-

1. *That the parties are awarded thirty days in which to negotiate their opposing positions on the various items of the CBA and agree on these items.*
2. *That in the absence of consensus inter parties per order number 1 above, this court shall rule on the amounts and figure to reign in the circumstances.*
3. *That the matter be mentioned on 4th November, 2013 to record progress and further directions of court.*
4. *That the delay and reluctance by the respondent in signing the CBA is an indication of poor industrial relations exercises and must be condemned.*

Essentially, the court awarded the parties leave and time to go out and negotiate their various positions relating to the disputed Collective Bargaining Agreement. It was further ordered that the parties report back for a mention on 4th November, 2013 to report on progress in negotiations.

The matter variously came for mentions on 26th November, 2013, 22nd January, 2014 and 17th February, 2014 when the parties reported that they were at advanced stages of negotiations and had made progress in the matter. However, on 19th March, 2014, there was a change of tone when the parties submitted that the matter was for mention to confirm filing of their written submissions on the subject.

The parties' submissions are reminiscent of a successful bargain and also bring out a case for disagreement on a few items of the Collective Bargaining Agreement. We commend them for their effort in so doing.

The claimant submissions disclose a dispute on union shop and membership. The parties are not in

agreement as to the fact of representation for the senior staff of the respondent. The union argues that even those in job groups MR 11, 12, 13, 14 and 15 should be unionisable and the only exemption should be the Chief Executive Officer and his deputies in scales MR 16 and 17.

The union also submits that the thirty five employees in this category (Doctors and Scientists) are covered by KMPPWU which now seeks to represent 35 out of 700 employees of the respondent.

The claimant supports her quest for representation of this category on Article 41 (5) of the Constitution of Kenya, 2010 which provides that every trade union, employers' organization and employer has the right to engage in collective bargaining. This is buttressed by S.54(1) and 57(1) of the Labour Relations Act on Recognition Agreements and Collective Bargaining Agreements *inter partes*.

The claimant's union therefore submits as follows:-

Under Section 41(5) of the Constitution of Kenya, Section 54(1) of the Labour Relations Act, Section 57(i) of the Labour Relations Act 2007, this Court has the powers to award as prayed. This position is reinforced by a letter/communication by the Attorney General vide his communication/letter dated 11thth October 2012 herein marked App.K

The respondents' submissions are in tandem with those of the union except on the issue of union representative for "management staff" in Job Groups MR11 – 15 as demanded by the union. The argument is that inasmuch as the constitution provides for free choice of trade union representation, workers in such senior category should not be afforded union representation as this would spell doom for the enterprise. They are senior and managers who supervise the respondents board policies and mandate and therefore unsuitable for union representation. They submit as follows:-

(ii) *Though Article 41 of the constitution provides for employees can join a union of their choice, it is important to take cognizance of the fact the human resource must be management if the organisation has to succeed in its mandate.*

Secondly the implementation of KEMRI's board policies and mandate is supervised by the employees in Job Group II and above.

(iii) *My lord, an employer under the same constitution has a right to determine who should help him in running the organization and does not wreck the ship from within. If employees from ob Group 11 to 15 are allowed to join the union, then confidential and secret information which is only supposed to be known by management staff would be leaked to the union and this would spell a disaster and at the same time compromise the management's position.*

Secondly of both supervisors and rank and file workers are allowed to join the union, then work will suffer as he supervisors will have divided loyalty between management and the union.

As it has already been observed the respondent has over 700 employees. Those in Job Group 11 to 15 carryout managerial functions and help in the running of the organization. They should therefore not be allowed to join the union.

(iv) *We p[ray the court to find that the unionisable employees in KEMRI are in Job Groups 1 to 10 and that Job Groups 11 to 15 are managerial and supervisory staff.*

I dispute the respondent's position on the unionization of the senior staff. The Constitution of Kenya, 2010 opened up a broad highway for the enjoyment of people's social economic rights. These undoubtedly include labour rights. It broadens their spectrum and the enjoyment of the same. Arguments and submission as expressed by the respondent are therefore untenable and unacceptable.

Article 41 on Labour relations;

41. (1) *Every person has the right to fair labour practices.*
- (2) *Every worker has the right –*
- (a) *to fair remuneration*
- (b) *to reasonable working conditions*
- (c) ***to form, join or participate in the activities and programmes of a trade union;***
- (d) *to go on strike*
- (3) *Every employer has the right-*
- (e) *to form and join an employers organization; and*
- (f) *to participate in the activities and programmes of an employers organization*
- (4) *Every trade union and every employers' organization has the right-*
- (a) *to determine its own administration, programmes and activities;*
- (b) *to organize; and*
- (c) *to form and join a federation.*
- (5) *Every trade union, employers' organisation and employer has the right to engage in collective bargaining.***

I would find and pursue a different cause in the circumstances.

As to the effective date of the Collective Bargaining Agreement, it is on record that the parties negotiated and agreed on 1st July, 2013 as the effective date. It was also agreed that the Collective Bargaining Agreement would run for four years up to 30th June, 2017. This court cannot afford to amend an agreed position except on very exceptional circumstances which are not apparent in the present situation.

I therefore find in favour of the claimant union and order as follows;-

- i. **THAT** this court adopts and enforces the agreement of the parties in the various items as hereunder;-
- a. Article 14 – Leave allowance
- b. Article 27 – Commuter allowance
- c. Article 28 – Medical risk allowance
- d. Article 38 – Hardship allowance
- e. Article 41 – General wage increase
- f. Article 45 – Heads of units allowance
- g. Article 46 – Basic salaries wages
- h. Article 50 – Effective date
- ii. **THAT** the effective date of the Collective Bargaining Agreement shall be 1st July, 2013 and as agreed *inter partes*.
- iii. **THAT** the Collective Bargaining Agreement shall be in force for a period of four years and expire on 30th June, 2017.

- iv. **THAT** the claimant union be and is hereby allowed and authorized to recruit its union membership from staff cadres and categories MR 11 to MR 15.
- v. **THAT** the Collective Bargaining Agreement be executed by the parties within fourteen days from the date of this order of court.
- vi. **THAT** the costs of this application and entire dispute shall be borne by the respondent.

Dated, delivered and signed this 18th day of June, 2014.

D.K. Njagi Marete

JUDGE

Appearances

1. Mr. Zacharia Achacha for the claimant.
2. Mr. R.M. Muthanga instructed by the Federation of Kenya Employers for the Respondents.