



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 192 OF 2008**

**KENYA SHOE AND LEATHER WORKERS UNION ..... CLAIMANT**

**VERSUS**

**BATA SHOE COMPANY (K) LIMITED ..... RESPONDENT**

Mr. Maina for Claimant

Mr. Obura for Respondent

**RULING**

1. The erstwhile Industrial court divered an Award on 25<sup>th</sup> November 2009 in which it stated that employees be granted rest day with pay in every period of seven (7 days).
2. The Respondent in its endeavor to effect the Award, provided for the pay on the two (2) rest days per a fortnight by reducing the agreed basic wage rates per fortnight.
4. The Claimant seeks payment of the rest days over and above the fortnight wage whereas the Respondent submits that it has duly complied with the Award.
5. The Court directed the Central Planning and Monitoring Unit (CPMU) to investigate the matter and file a report with the Court.
6. The unit filed a report by **Mr. F. K. Ng'ang'a** in which it recommended that the Respondent has not complied with the Award of the Court because it has added no real value to the workers' earnings as was intended in the Award of the Court.
7. The Unit recommended that;  
  
**“Respondent needs to add sixteen (16) hours pay to the Workers over and above the agreed fortnight basic wage rates”** to comply with the Award of the Court.
8. From the Respondent's submissions dated 4<sup>th</sup> October 2013 and filed on the same date the

implication of the recommendation is an additional payment of;

(a) 2011 – 2013	66,460.795/=
(b) 2009 – 2011	61,349,912/=
(c) 2007 to 2009	56,614,836/=
(d) 2005 to 2007	53,111,164/=
Total Demand	237,536,707/=

9. These figures are arrived at after calculating the hourly rate of each grade of employees multiplying the resultant figure by the number of employees in that grade then multiplying by 16 hours per week as claimed by the Claimant and again multiplying by the number of weeks in a year and adding up the figures for all the years covered.

10. It was the Respondent's submission that, if the Court interpreted the Award in this manner, which Mr. Obura submits is erroneous, the Respondent cannot withstand the astronomical figure arrived at and will be compelled to be wound up.

11. The Respondent submits that the Award of Chemmuttut J. was unreasoned and contained a vague statement the real meaning of which has been exploited by the Claimant for its own benefits.

12. The real issue for determination is whether wages forthrightly paid to employees of the Respondent who perform 87 hours and 15 minutes of work during that period include payment for rest days.

13. The Judge according to the Respondent referred to the provision of **Section 27(2)** of the **Employment Act 2007** without placing it in context of the facts of the case.

The Section reads:

**“an employee shall be entitled to at least one day rest in every period of seven days.”**

14. **Section 37(2)** of the **Employment Act**, provides:

**“in calculating wages and the continuous working days under Subsection (1) a casual employee shall be deemed to be entitled to one paid rest day after a continuous six days working period and such rest day or any public holiday which falls during the period under consideration shall be counted as part of continuous working day”**

15. The logic applies in calculation of wages for fortnightly and monthly paid employees so that the rest days and public holidays within the fortnight or the month (whether it be a month of 28 days or 31 days) shall be counted as part of continuous working days and paid accordingly, and not over and above the salary payable per fortnight or month.

16. The Claimant submits that the fortnight salary paid for the Respondent did not include the rest days whereas the Respondent submits the contrary.

The report of the Unit is in agreement with the Claimant. However it is for the Court and not the Unit to accord the Award a proper interpretation.

17. The trial Judge ought to have done so but abdicated that responsibility and transferred it wrongly to the unit.

18. I have carefully analysed the three (3) page Award by Chemmuttut J. and come to the conclusion

that the Judge did not make a finding as to whether the Grievants were not paid for rest days or not.

19. The Judgment does not at all inform how the Grievants were paid and if there was any under payment at all. The report by the Monetary Unit does not find any basis in the Award of the Court.

20. In the final analysis the Court finds that a salary paid forthrightly or monthly covers the rest days and holidays and is not based on the length of the week or month for that matter.

Each party to bear own costs.

**Dated and Delivered at Nairobi this 4<sup>th</sup> day of July, 2014.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**