



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT AT NAIROBI**

**CAUSE NO. 724 OF 2013**

**JUDGMENT**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS &  
ALLIED WORKERS**

**VERSUS**

**KENYA MEDICAL TRAINING COLLEGE**

**DELIVERED BY**

**HON. LADY JUSTICE MAUREEN ONYANGO**

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**KENYA UNION OF DOMESTIC,**

**HOTELS, EDUCATIONAL INSTITUTIONS,**

**HOSPITALS & ALLIED WORKERS .....CLAIMANT**

**VERSUS**

**KENYA MEDICAL TRAINING COLLEGE.....RESPONDENT**

**JUDGMENT**

By a Memorandum of claim dated 17<sup>th</sup> May 2013 and filed in court on the same day the Claimant prays that this court orders the Respondent to implement the Collective Bargaining Agreement registered by this court on 22<sup>nd</sup> October 2012 as RCA No. 226 of 2012.

The issue in dispute is non-implementation of Collective Bargaining Agreement (CBA) and in particular Clause 14 on increase of Salaries with effect from 1<sup>st</sup> July 2012. The Respondent filed a statement of Response on 11<sup>th</sup> June 2013. The thrust of the Respondents response is that Clause 14 of the Collective Bargaining Agreement is subject to the advise of the Salaries and Remuneration Commission and the Ministry of Medical Services.

The facts of the case are not in dispute. The Respondent Kenya Medical Training College is a State Corporation established under the Kenya Medical Training College Act. It is managed by a Board of management. The Respondent's parent Ministry is the Ministry of Medical Services.

The Respondent has a recognition agreement with the Claimant signed on 10<sup>th</sup> May 2010. Pursuant to the signing of the recognition agreement and in compliance with the provisions of Section 57(1) of the Labour Relations Act, the parties hereto signed a Collective Bargaining Agreement on 18<sup>th</sup> July 2012. The Collective Bargaining Agreement's effective date is 1<sup>st</sup> July 2012. The Collective Bargaining Agreement was registered by the Industrial Court on 22<sup>nd</sup> October 2012 as RCA No. 226 of 2012.

The Respondent failed to implement the Collective Bargaining Agreement as a result of which the Claimant reported a trade dispute to the Minister for Labour. The dispute was not resolved at conciliation and was thus referred to this court for determination.

Mr. Tonge Yoya appearing for the Claimant submitted that the Collective Bargaining Agreement is valid and binding after being negotiated, executed and registered by this court, that the Respondent is not challenging the validity of the Collective Bargaining Agreement, that the role of Salaries and Remuneration Commission is only to advise the Respondent and cannot stop it from implementing the Collective Bargaining Agreement and that it was the responsibility of the Respondent to seek advise before coming to the negotiation table. Mr. Yoya relied on a letter of advise from the State Law Office to the Secretary of State Corporation Advisory Committee dated 11<sup>th</sup> October 2012 to the effect that the Salaries and Remuneration Commission does not have power to make recommendations on matters relating to the salary and remuneration of an employee of a State Corporation. The letter is signed by the Attorney General, Githu Muigai.

Mr. Yoya further submitted that if the Respondent made a mistake by failing to follow guidelines the workers should not suffer for the same, that the mistake is a housekeeping matter for the Respondent, that the Respondent did not raise the issue during registration of the Collective Bargaining Agreement although it was within their knowledge and that they cannot now turn around and ask the court to help them because they made an error. He urged the court to order the implementation of the Collective Bargaining Agreement.

Mrs. Oduor for the Respondent submitted that the Respondent is keen on implementing the Collective Bargaining Agreement but it is Salaries and Remuneration Commission which has caused the difficulty in implementation. She referred to a letter dated 31<sup>st</sup> January 2013 in which the Ministry of Medical Services cited challenges that made it impossible to implement the Collective Bargaining Agreement. These included lack of consultation of Salaries and Remuneration Commission and the Ministry. She submitted that the agreement did not comply with provisions of the law and is illegal and that the court cannot enforce an illegal agreement. She submitted that the agreement was illegal for failure to seek advise of Salaries and Remuneration Commission whose special role is constitutional and that the Claimant acknowledged the role of Salaries and Remuneration Commission as determined in Clause 14 of the Collective Bargaining Agreement. Mrs. Oduor further submitted that there is also a contravention of Section 202 of the Public Finance Act, 2012 and that Section 60(6) of the Labour Relations Act recognizes that the Collective Bargaining Agreement should not contravene any other law.

Mrs. Oduor further submitted that the Collective Bargaining Agreement had a lifespan of 2 years which have lapsed. She urged that the court orders the parties to enter into fresh negotiations for the succeeding period.

On the authorities cited in the Claimant's Memorandum of Claim Mrs. Oduor submitted that the circumstances in Cause No. 1539 of 2010 are not similar to the present case while in Cause 69 of 2004 the court was guided by the Wages Guidelines. She submitted that the 2 cases are therefore not applicable.

I have considered the written submissions and oral arguments by the parties. A representative of Salaries

and Remuneration Commission (SRC) attended court in compliance with summons issued to the Chief Executive Officer of the Salaries and Remuneration Commission, and informed the court that the Salaries and Remuneration Commission had already communicated its decision to the Respondent.

The contentious Clause 14 of the Collective Bargaining Agreement reads as follows:

*“14. Increase in Salaries*

*During the term of this agreement, salaries and allowances shall be increased by 12% each year; subject to the rates as advised by the Salaries and Remuneration Commission, whichever is higher, commencing from 1<sup>st</sup> July 2012”.*

In my understanding, the purport of this Clause is that the Respondent would increase salaries and allowances of its employees who are subject to the Collective Bargaining Agreement by 12% on 1<sup>st</sup> July 2012 and a further 12% on 1<sup>st</sup> July 2013, unless the Salaries and Remuneration Commission advises on higher salaries, in which event the higher salaries will apply.

One of the issues that I have to determine is whether the Collective Bargaining Agreement was illegal for failure to comply with the law.

According to Section 59(5) of the Labour Relations Act, a Collective Bargaining Agreement becomes enforceable and shall be implemented upon registration by the Industrial Court. A Collective Bargaining Agreement is effective from the date agreed upon by the parties.

Section 59(3) provides that the terms of a Collective Bargaining Agreement shall be incorporated into the contract of employment of every employee covered by the Collective Bargaining Agreement.

From the foregoing provisions it is evident that the Collective Bargaining Agreement became effective, and was incorporated into the contracts of the relevant employees on the date of registration by the court on 22<sup>nd</sup> October 2012.

The issues raised by the Respondent were all in the knowledge of the Respondent on the date of registration but they made no objection to the registration. The purpose of calling the parties to attend court on the date of registration is to give the parties an opportunity to confirm or raise issues before the registration. Having failed to raise any issues, the Respondent is in my opinion estopped from refusing to implement the Collective Bargaining Agreement. I would equate the registration before the court to the solemnization of a marriage. Like the marriage Registrar announces, any person who has a reason to stop the marriage must raise it before the marriage is solemnized or forever keep their peace; so it is with the Collective Bargaining Agreement. A party must raise any issue they have before the registration or keep silent forever. The registration can only be undone in a similar way as a divorce, that is, by one of the parties petitioning the court for the same. The Respondent has not petitioned the court to review or set aside the registration of the Collective Bargaining Agreement. Neither has the Ministry of Medical Services or the Salaries and Remuneration Commission. The decision of this court cannot be overturned in the Boardroom of the Salaries and Remuneration Commission or by a letter from the Permanent Secretary in the Ministry of Medical Services as has been attempted in this case. The Respondent cannot purport to be seeking approval for implementation from the Salaries and Remuneration Commission or any other body or authority after this court has validated the Collective Bargaining Agreement. I would term all the activities that have taken place after the registration of the Collective Bargaining Agreement as shadow boxing outside the ring after the game is over and the referee has announced the outcome of the match. Needless to say, such activities cannot affect the outcome of the match.

For the foregoing reasons I declare the Collective Agreement between the Claimant and the Respondent registered in court on 22<sup>nd</sup> October 2012 as RCA No. 226 of 2012 to be valid and having already been incorporated in the contracts of the employees who are subject thereto.

I order the Respondent to implement the Collective Bargaining Agreement in its entirety within 30 days from the date of this judgment failing which the Claimant will be at liberty to enforce the same by any lawful means available.

Read in open Court this 25<sup>th</sup> day of November, 2014

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

**In the presence of:**

Tonge Yoya for claimant

Ms. Mungai holding brief for Mrs. Oduor for Respondent