



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 62 OF 2014**

**KENYA PLANTATION & AGRICULTURAL WORKERS**

**UNION**

**CLAIMANT**

**V**

**SHALIMAR FLOWERS (K) LIMITED**

**RESPONDENT**

**JUDGMENT**

1. The Kenya Plantation & Agricultural Workers Union (Union) commenced legal proceedings against Shalimar Flowers (K) Ltd on 12 March 2013 and the issue in dispute was stated as failure to conclude the 2013-2015 Collective Bargaining Agreement.
2. The Union and the Respondent had previously concluded a collective bargaining agreement for the period 2011-2013 and which agreement was due for review on 1 March 2013. Several meetings to negotiate and conclude a new agreement agreed on a majority of the proposals save for some 5 items on house allowance, general wages, membership, sick leave/off and essential services.
3. The Union reported a trade dispute to the Cabinet Secretary for Labour and a conciliator was appointed, and on 20 February 2014 the Union and the Respondent signed a Memorandum of Agreement in the presence of the Labour Officer, Naivasha Sub County. The parties agreed on all the issues up for discussion except the issue of wages.
4. The Union had proposed a 13.5% wage increase for 2013 and a similar percentage increase for 2014, while the Respondent had proposed 7% increase for 2013 and another 7% for 2014 effective from date of signing the new Collective Bargaining Agreement or alternatively 5% increase for 2013 and another 5% from effective date of the new Collective Bargaining Agreement.
5. After service of the Notice of Summons, the Respondent filed a Statement of Reply on 4 June 2014. On 26 July 2014, Ongaya J directed the Union to file written submissions and the same were filed on 3 July 2014, while the Respondent filed submissions on 8 October 2014 and that the Cause be determined on the basis of submissions.
6. In the meantime, the Central Planning & Monitoring Unit (CPMU) had filed its report on 30 May 2014.

**Union's case/submissions**

7. According to the Union, there was a 20% rise in the cost of living based on the Consumer Price Indices during the period of the expired Collective Bargaining Agreement (2011-2013), and that the

government had increased minimum wages by 12.5% on 1 May 2011. The Union further submitted that pursuant to the Wage Guideline No. 2, the Court ought to grant a 100% increase where there was a 20% loss in purchasing power due to inflation.

8. Further, the Union submitted that the wage differential between the highest paid unionisable employee and lowest paid management staff was a whopping 454.6%. A simple arithmetic on the figures quoted show a difference of Kshs 27, 302/- and this disparity was too wide.

9. Lastly, the Union submitted that according to the CPMU report there had been improved net profits of Kshs 41,000,000/- in 2010, to Kshs 48,300,000/- in 2013. The Respondent was making healthy profits showing improved labour productivity.

10. The Union cited 3 authorities, *Kenya Chemical & Allied Workers Union v Leather Life EPZ Ltd* (2014) eKLR, *Kenya National Private Security Workers Union v Kenya Kazi Security Services Ltd* (2013) eKLR and *Kenya Union of Food & Allied Workers v Kamacharia Farmers Cooperative Society Ltd* (2013) eKLR.

### **Respondent's case/submissions**

11. The Respondent submitted that the Union did not demonstrate the factors which informed its decision to seek the percentage wage increases sought and urged that the relevant factors were high cost of labour, past wage bill trends, Respondent's financial position and lastly compensable factors.

12. On the high cost of labour, the Respondent submitted that according to the CPMU report there was a decline in its work force between 2010 and 2013 with an increase in labour cost over the period and that it had reduced its labour force due to high taxations, stagnant prices in the international market, high cost of airfreight, high cost of production and poor roads among others.

13. Despite the difficulties, the cost of labour had remained high because of the improved terms agreed with the Union.

14. An award of 27% spread over two years, the Respondent submitted would lead to further reduction of staff and hence lower productivity. Reference was also made to the high unemployment rates in Kenya.

15. On wage bill trends, the Respondent relying on the CPMU report submitted that there had been an upward trend from Kshs 79,300,000/- in 2010 to Kshs 111,200,000/- in 2012, and that this was consistent with the Respondent being mindful of its employees' welfare, and international labour standards.

16. Regarding the Respondent's current financial position, it was submitted that based on the CPMU report, the Respondent had experienced sharp fluctuating profit margins and a loss in 2013, and a wage increment of 27% would paralyse the Respondent's operations. The CPMU report was prepared on the basis of unaudited reports.

17. The last factor submitted on was compensable factors. It was submitted that the Respondent has tried to reduce the cost of living for its employees by establishing a crèche for employees' children and employed 18 people and 4 teachers to look after the children and also maintained a fully equipped clinic for the employees. The Respondent also operated a subsidized canteen.

18. The Respondent further submitted there was no improved labour productivity during the period under review.

### **Evaluation**

19. The Court has considered the pleadings, evidence and submissions by the parties and the

authorities cited.

20. Both parties identified the relevant factors the Court ought to consider when called upon to adjudicate over a dispute such as this. The factors are the compensable factors, (cost of living, labour productivity/cost of labour), past wage trends and the financial position of the employer.

21. The CPMU report, based on statistics from the Kenya National Bureau of Statistics leaves no doubt that there was a 20% rise in the cost of living over the relevant period.

22. The report however did not examine whether there was improved productivity over the period under review. It simply relied on information from the Respondent that there was no improved productivity.

23. On the cost of labour, the report noted that the Union's proposals would lead to an additional wage bill of Kshs 13,592,019/- in the first year, and Kshs 15,426,941/- in the second year (total of Kshs 29,018,960/-).

24. The Respondent's offer on the other hand would lead to an additional wage bill of Kshs 5,034,081/- during the first year, and Kshs 5,285,785/- during the second year.

25. However, upholding the consumer price index would occasion a wage increase of Kshs 10,068,162/- during year one, and Kshs 11,074,978/- during year two (total of Kshs 21,143,140/-).

26. The report also noted that the cost of production went up by about Kshs 60,000,000/- in 2013.

27. Assessing wage increments where social partners have not agreed is ordinarily not an easy job for a judge, who is far removed from the realities and practicalities of the factory floor, farm or the economy in general. The Court can only act based on the material placed before it. Although the material invariably includes statistics, the Court is not called upon to conduct a forensic mathematical exercise.

28. Sometimes, even the parties themselves do not have the degree of expertise required to adequately inform the Court. An example is here where the report by the expert did not address the issue of productivity. The Court is not even aware whether the proposed Productivity Centre has been established and is up and running.

29. The Court must therefore carry out a delicate balancing act. The economic or financial status of the employer must be balanced with the need for employees to gain from the fruits of their labour. That is what social justice demands, but the employer must not be killed in the process.

30. The right to fair remuneration is now a constitutional imperative. Economic and social rights have been constitutionalised. The Court must also consider these constitutional imperatives.

31. The Union submitted that the minimum wages were increased across the board by 12.5% on 1 May 2011. That is about 3 years ago. This year, the relevant organ of State has not announced any increases on the minimum wages.

32. Balancing the competing but mutual needs of employees and employers and the factors discussed above, the Court is of the opinion that a wage increase of 10 % for the first year and a further 10 % for the second year would be fair.

33. The parties also did not agree on the effective date. Clause 39 of the 2011-2013 Collective Bargaining Agreement provided that it would take effect from 1 March 2011 and remain in force for two years. The two years expired around 28 February 2013. The clause further provided that the Agreement would continue in force until amended by both parties.

34. The parties attempt to sign a new agreement or amend the expired one hit a brick wall. It is

now nearly one and a half years down the line. But that was the mutual agreement of the parties.

35. Considering the clause, the Court is of the view that the increments awarded herein should be effected with effect from 1 March 2014.

36. Before concluding, the Court observes that of the authorities cited by the Union, *Leather Life EPZ Ltd* and *Kamacharia Farmers Cooperative Society Ltd*, the *Leather Life EPZ Ltd* case relates to different sector of industry which is exempt from certain taxes and therefore of not much assistance while the *Kenya Kazi Security Services Ltd* decision was overturned by the Court of Appeal.

### **Conclusion and Orders**

37. On the basis of the foregoing, the Court awards the unionisable employees of the Respondent a 10 % wage increase effective 1 March 2014 and another 10 % effective 1 March 2015.

38. Considering that the parties are social partners who have an ongoing relationship the Court orders each party to bear its own costs.

**Delivered, dated and signed in open Court in Nakuru on this 14<sup>th</sup> day of November 2014.**

**Radido Stephen**

**Judge**

### **Appearances**

For Union	Mr. Meshack Khisa, Organising Secretary, Kenya Plantation & Agricultural Workers Union
For Respondent	Mr. Odongo instructed by Nyachoti & Co. Advocates