



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU
CAUSE NO. 487 OF 2014

KENYA PLANTATION & AGRICULTURAL

WORKERS UNION

CLAIMANT

v

UNILEVER TEA (K) LIMITED

RESPONDENT

RULING

1. The Kenya Plantation & Agricultural Workers Union (Union) commenced legal proceedings against Unilever Tea (K) Ltd (Respondent) on 3 October 2014 and the issue in dispute was stated as

Failure to agree on wage increases, hours of work, gratuity new clause(d) and Retirement Age for the C.B.A applicable for the period 2014-2015.

2. Together with the Memorandum of Claim was a motion seeking

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3. *THAT an order do issue that the Central Planning and Monitoring Unit (CPMU) to conduct an analysis on the issues in dispute and file a report within fourteen (14) days from the date of the Order.*

4. *THAT an Order do issue that the Respondent to file it's audited financial records detailing profits and losses for the year 2012 and the year 2013 within seven (7) days after service.*

3. The motion was served upon the Respondent and it filed a Replying Affidavit sworn by Lucy Lelo, its Legal Counsel on 24 October 2014, and a further affidavit sworn on 30 October 2014.
4. The motion was taken on 30 October 2014.

The issues

5. The facts are fairly common.
6. The Union and the Respondent have a recognition agreement. They were in the process of negotiating a collective bargaining agreement for 2014-2015. They agreed on all the issues up for discussions except *wage increases, hours of work, gratuity and retirement age*.
7. A trade dispute was thus reported and the parties have been undergoing conciliation before a Labour Officer.
8. The Union now requires the input of a government Unit which has been carrying analysis in respect of economic disputes for a long time in our jurisdiction to enable it competently put its case forth either before the Conciliator or the Court.
9. The Union relies on sections 12 of the Industrial Court Act and 21 of the Labour Relations Act, and rule 16 of the Industrial Court (Procedure) Rules, 2010.
10. The Respondent resists the motion on the ground that the motion is premature because the parties have not exhausted the dispute resolution mechanisms embedded in the recognition agreement between the parties.
11. It is further asserted that conciliation has begun before the Mrs. G Mweresa of Ministry of Labour.
12. This is the first time that I am seeing a resistance to involving the CPMU to analyse the relevant economic factors in assisting social partners in reaching a mutually agreeable resolution of an economic dispute.
13. The Industrial Court has wide powers under section 20(2) and (4) the Industrial Court Act to call for reports such as the one the Union is seeking from the CPMU.
14. The CPMU has developed unparalleled expertise in economic disputes and bring to the attention of the social partners the consumer price indices during the relevant period/inflationary trends, performance of employers and the like.
15. Their reports can ensure parties reach agreement through alternative dispute resolution (conciliation).
16. It cannot be premature for the Union to seek the expertise of the CPMU to assist in the conciliation process. The report of the CPMU will assist both parties to competently put their cases across during the conciliation.
17. Further, under section 56 of the Labour Relations Act, trade unions have a statutory right of access to employers' premises in furtherance of its right to organise and bargain.
18. By dint of section 57 of the same Act, a trade union is also entitled to certain information from an employer.
19. The information sought by the Union includes financial statements. I do not understand why the Respondent would deny the Union the financial statements. Employers are expected to make financial/tax returns with the tax authorities unless exempt.
20. It was not suggested the Respondent is exempt or that the financial statements are privileged.
21. Good faith should be the hallmark of industrial relations especially where the social partners have a recognition agreement and have concluded previous collective bargaining agreements. Where good faith is not shown, the Court may award costs appropriately.
22. Before concluding, I have looked at the decisions in *Kenya Game Hunting & Safari Workers Union v Southern Cross Safaris Ltd* (2014) and *Kenya Union of Printing, Publishing, Paper Manufacturers, Pulp & Packaging Industries v Raffia Bags (EA) Ltd* (2014) eKLR and find that they are distinguishable from the present case.
23. The Court finds merit in the motion dated 3 October 2014 and grants orders 3 and 4 of the Motion with the proviso that the CPMU report be filed with the Court and copies given to the parties within 30 days hereof or earlier.
24. Costs in the Cause
25. Because of the establishment of an Industrial Court in Kericho, the Court transfers this Cause to Kericho and directs the parties to report back on progress on the Conciliation on 30 January 2015 before the Court in Kericho.

Delivered, dated and signed in open Court in Nakuru on this 5th day of December 2014.

Radido Stephen

Judge

Appearances

For union Mr. Khisa, Organising Secretary, Kenya Plantation & Agricultural Workers Union

For Respondent Mr. Njeru instructed by Kaplan & Stratton Advocates