



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 163 of 2012

UNION OF NATIONAL RESEARCH & ALLIED

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

VERSUS

KENYA MARINE & FISHERIES RESEARCH

INSTITUTE (KMFRI).....RESPONDENT

JUDGMENT

The claimant and the Respondent voluntarily negotiated and signed a Recognition agreement on 18.6.2004 and amended the same on 12.2.2009. ever since they have never concluded a Collective Bargain Agreement (CBA) due to disagreement on some of the items on the draft CBA.

At the start of the Suit, the parties had disagreed on:-

- (a) Salaries, increments and deductions
- (b) Allowances
- (c) Leave
- (d) Transport
- (e) Medical privileges
- (f) Retirement benefits
- (g) Other provisions
- (h) General wage increase
- (i) Effective date.

The Matter proceeded before Justice Kosgey who made a decision on 9.2.2012 directing the parties to negotiate in good faith on the disputed issues under the supervision of a conciliator appointed by the

Minister.

On 25.5.2012, the parties returned to court and reported that they had agreed on all the disputed issues except four. The court then directed that the hearing be done on the four outstanding issues. After several adjournments at the request of the parties, the case proceeded by way of oral submissions on 26.2.2013 and 19.3.2013.

Mr. Achacha for the claimant submitted that the respondent was a State Corporation established under an Act of Parliament. That the parties herein had a Recognition Agreement since 2009 but no CBA was yet to be concluded due to disagreement on the following items:-

- (a) Commuter Allowances
- (b) House Allowance
- (c) General Wage increase
- (d) Effective date and the document ion of the CBA.

On Commuter Allowance, he submitted for the amounts provided by the Government Circular dated 27.6.2011 marked Appendix 9 in the Claim. The effective date was 1.7.2011. That the parties agreed on the effective date of the first phase to be on 1.7.2011 but the second phase is in dispute. He submitted for a backdated award of Kshs.3000/- for the lowest and

Kshs. 14000/= for the highest with effect from 1.7.2011.

On the Claim for House Allowance, he submitted that the grievants are currently the lowest paid in Kenya because their rate were last reviewed in 2001 to Kshs.3000/= lowest and Kshs.20,000/= highest. He asked for an award of Kshs. 7000/= for the lowest and Kshs. 40,000/= highest paid in the cities of Nairobi, Mombasa and Kisumu. In all the other Municipalities he submitted for Kshs.6000/= lowest and Kshs. 35,000/= for the highest paid. In the alternative, he prayed for a general increment at the rate of 25% for the first year and 25% for the second year.

On the general wage increase, he submitted that the grievants are still paid at the rates contained by the government circular dated 13.8.2008 marked appendix 'C' in the claimant's documents filed on 13.3.2013. He referred the court to the government circular dated 25.6.2012 marked appendix 'D' in the claimant's document filed on 13.3.2013, which increased the salaries by 17%. He prayed for a salary increment of 25% for the first year and another 25% for the second year. He cited the increased cost of Living as the reason for the request for salary increase.

On the capacity to negotiate, he further submitted that the Respondent as a State Corporation was free to negotiate terms and conditions of employment with her employees as per Government Circular dated 23.11.2004 marked as Appendix E in the claimant's documents filed on 13.3.2013. He observed that the respondent's offer of 3% for the first year and 3% for the second year salary increase was not fair and did not consider the increase in the cost of living.

On the last issue of effective date, he submitted for 1.7.2011 and the agreement to run for 2 years. According to him, this is the date which the respondent initially requested for when the claimant was praying for 1.7.2009.

In response, Mr. Ambenge for the respondent relied on his written submissions and only made highlights. He argued that the respondent was not a civil service body and as such, the Government Circulars with regard to Civil Service Commission employees did not apply to her employees.

He pointed that the Circular dated 23.11.2004 marked Appendix E provided for negotiations based on the approved manpower budget by the Treasury. He further submitted that wage increase must be based on

the productivity and profitability of the organization. That the respondent was not a profit making organization but relied on grants and which fact is corroborated by the EPD Report dated 28.10.2010. Although he admitted that cost of living was up, his client could only afford 3% salary increase per year. He proposed a salary increase at 3% for the first and 3% for the second year which is within the approved budget.

On the issue of effective date, he submitted for 1.7.2012 because all the money intended for an earlier effective date had been returned to the treasury. He concluded by referring the court to the 2012/2013 estimates by his client.

I have carefully perused the pleading by each party. I have also considered the submissions by the parties and the EPD Report from Ministry of Labour dated 28.10.2010. I am satisfied that I have jurisdiction to entertain the dispute under Article 162(a) of the Constitution and the relevant Labour Laws of Kenya.

The issues for determination in my view are:-

- a) Whether the grievants are entitled to increment of Commuter Allowance, General wage and House Allowances and if so to what extent?
- b) What should be the effective date and the duration of the CBA in dispute.

To answer the first issue, I am aware that the EPD Report dated 28.10.2010 did not recommend any increments but instead observed that, the CBA in dispute being the first one, parties could negotiate and agree. In my view, the report did not help the court in deciding the thorny issues of improved terms of employment for the grievants. The EPD did not even tell the court that the cost of living had increased which is a known fact to EPD, which has occasionally advised this court in other similar disputes.

It is not in dispute that the cost of living in Kenya has increased from 13.8.2008 when the salary for the grievants were last reviewed. It is also not in dispute that the terms and conditions of service with regard to Commuter Allowance, salary and House Allowances for the Civil Servants have been reviewed upwardly due to the rise in cost of living since year 2008. I have also no doubt that the salaries for the grievants though not in the civil service *per se*, should be comparable if not harmonized with those of their counterparts in the Civil Service.

Consequently, I direct that the said items in dispute be harmonised with the terms and conditions for the Civil Service of their corresponding job groups as at 1.7.2012 unless where the grievants already have a higher pay which shall not be affected.

As regards the effective date and the duration for the CBA, the same shall run from 1.7.2012 for two years.

The parties are directed to move with speed to conclude the signing of the CBA and file it for registration within 21 days of this judgment.

I make no order as to costs.

Orders accordingly.

Signed, Dated and Delivered on the 26th day of April 2013.

Onesmus N. Makau
JUDGE

In the presence of

Z. Achacha.....for Claimant.

A. Muinda.....for Respondent.

B. KombeCourt Clerk.