



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 249 OF 2013

KENYA PETROLEUM OIL WORKERS UNION.....CLAIMANT

-VERSUS-

KENYA PIPELINE COMPANY LTD.....RESPONDENT

Mr. Onyany for Claimant/Applicant.

Mr. Kibanga for Respondent.

JUDGMENT

The Application dated 24th February, 2013 was filed on 25th January, 2013 alleging various breaches of the parties Collective Bargaining Agreement (CBA). On 25th February, 2013 the court granted an interim order to the Claimant/Applicant in the following terms:

“The Respondent is restrained from continuing with the restructuring process without notifying and consulting with the Claimant union since the process is likely to change/alter the terms and conditions of service of the employees who are members of the union in violation of the current CBA dated 23rd January, 2012. That the Application be heard inter parties on 12th March, 2013.”

The Respondent filed a response to the Application on 22nd March, 2013.

The Application was set for hearing and mention variously but was not heard for various reasons advanced by either party.

On 4th June, 2013, the parties through their respective advocates entered a consent in the following terms:

“By consent of the parties, the entire suit be and is hereby settled in the following terms: -

- 1. That the proposed staff rules and regulations of July, 2012, revised career guidelines of June, 2012, and the organizational structure of 26th July, 2012 shall not affect the Collective Bargaining Agreement dated 23rd January, 2012 and the unionisable employees*
- 2. The aforesaid documents in (1) above shall not affect future negotiations between the parties herein; and*

3. *Each party to bear its own costs.*”

The said consent by the parties was recorded as order of the court on the same date. However, Mr. Kibanga for the Respondent had informed the court that his client was not in court on that date and he required to take final instructions on the consent.

On 7th June, 2013, the matter was mentioned and Mr. Kibanga indicated that the Respondent wished to vary the wordings of the consent as follows: -

“1. The Respondent shall not in any manner whatsoever alter and/or amend the contents of the Collective Bargaining Agreement dated 23rd January, 2012 without first reaching an agreement with the claimant.

2. Each party shall bear its own costs.”

The parties failed to reach an agreement on the wording of the consent.

The parties agreed to make final submissions on the area of disagreement to allow the court to find a fair and just solution to the dispute.

It is the Applicant’s submission that the proposed staff rules and regulations of July, 2012, revised career guidelines of June, 2012 and the organizational structure of 26th July, 2012, will affect unionisable and non-unionisable staff, impact various provisions of the CBA in a material way and it was important that the court stops implementation of any matter that amounts directly or indirectly to a change of the terms and conditions of the unionisable staff which matters are negotiable as per the Recognition Agreement that is binding on the parties. That such changes may only be introduced in the CBA pursuant to such negotiations regardless of whether they are structural or regulatory or for purposes of career development.

The Applicant urged the court to find that the proposed change if implemented without prior collective consultations and/or negotiations would be in breach of the Recognition Agreement, the CBA and therefore the provisions of the Labour Relations Act and the same be disallowed accordingly.

Counsel for the Applicant took the court though the various proposals in the three documents which he submitted clearly violated the CBA.

On the converse the counsel for the Respondent strongly submitted that the management had the right to introduce structural, regulatory and career defining changes in the organization in the manner it had done. That none of the documents introduced were meant to circumvent and/or pre-empt the provisions of the CBA.

That the proposed changes have been done in good faith to improve the performance of the organization as a whole and have been misconstrued by the Applicant union.

Counsel submitted that, the Application before court was meant to stop imaginary retrenchment of workers or things which the Respondent had not contemplated at all.

That all the matters prayed for in the Application including but not limited to prohibiting the Respondent from:

0. terminating contracts of unionisable employees.
0. employing replacement labour
0. Employing other staff on inferior terms.
0. Unilateral amendment of the CBA.

are but imagined mischief which are not founded on any facts before court. The replying affidavit by the Human Resource Manager clearly states that none of the alleged matters are contemplated by the

Respondent as alleged by the Applicant or at all.

The Respondent concluded by stating that the entire application by the Applicant is premised on unfounded fear of loss of jobs.

That the documents developed by the management are purely for internal management of the organization and have no connection to any redundancy.

The Respondent urged the court to resolve the matter in terms of the wording it proposed in the letter dated 10th June, 2013 as this would completely settle all the fears raised by the Applicant.

That the earlier consent order would impede implementation of the documents mentioned therein which concern other employees of the institution as well.

In response, counsel for the Applicant referred the court to the preamble to the Recognition Agreement which clearly demonstrates that the documents sought to be introduced by the respondent are negotiable instruments and must be preceded by consultations prior to the proposals followed by negotiations within the framework of collective bargaining.

Upon a careful evaluation of all the matters sought to be addressed in the proposed staff rules and regulations of July, 2012, revised career guidelines of June, 2012 and the organizational structure of 26th July, 2012, having regard to the negotiable matters listed in the Recognition Agreement and upon a thorough perusal of the provisions of the current CBA of the parties, the court was of the considered view that matters that impact the terms and conditions of unionisable staff covered by the CBA, are contained in these proposed documents.

It is common cause that no consultations and/or collective bargaining preceded the introduction of the said documents, especially on the specific matters that impact the CBA.

Accordingly, the court makes the following orders:

1. That any provision in the staff rules and regulations of July, 2012, revised career guidelines of June, 2012, and the organizational structure of 26th July, 2012 that is negotiable in terms of the Recognition Agreement of the parties and which directly impacts specific provisions of the current CBA dated 23rd January, 2012 is not applicable to all unionisable staff unless the same is subject of consultations and negotiations with the Claimant/Applicant union within the framework of collective bargaining.
2. For the avoidance of doubt, this order does not affect the above said documents (measures) to the extent the same do not impact negotiable terms and conditions of service of unionisable staff.
3. Each party to bear its costs.

It is so ordered.

Dated and delivered at Nairobi this 27th day of August, 2013

MATHEWS N. NDUMA

PRINCIPAL JUDGE