



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI

CAUSE NO. 25 OF 2013

(Nairobi Cause No. 1453 of 2011)

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS
.....CLAIMANT

Versus

KAMACHARIA FARMERS COOPERATIVE SOCIETY LIMITED
.....RESPONDENT

JUDGMENT

The issues in dispute as framed by the claimant Union concern review of clauses in the CBA regarding medical allowance, safari and subsistence allowance and percentage salary increment.

The parties in dispute had a valid CBA and had previously entered into and concluded several CBAs in the past. The CBA that brought about this suit expired on 30th September, 2008 and a new one covering the period from 1st October, 2008 to 30th September, 2010 was due for negotiation. It would therefore seem that at the time of writing this judgment the parties herein ought to have been under the CBA entered into on 1st October, 2012 expiring on 30th September, 2014.

According to the claimants, they notified the respondent of the intention to review the CBA and sent proposals for review but attempts to have a meeting arranged for purposes of negotiations proved futile. Having made all necessary attempts to review the CBA voluntarily without any success, the claimants could not wait any longer. They therefore reported the dispute to the Minister for Labour and Human Resource to appoint a conciliator in accordance with section 63 of the Labour Relations Act. The Minister consequently appointed Mr. J. R. Chigity of Murang'a Labour Office to act as a conciliator. The parties were however unable to reach any agreement prompting the conciliator to refer the matter to the Industrial Court for determination.

The respondent by its memo of response filed on 29th November, 2011 concurs with most of the averments by the claimant. It is however the respondent's position that when the review for the 2008 – 2010 CBA came up, the parties could not agree because the respondent could not offer any increases on the 3 items of the dispute since there was no money to finance them. The respondent attributed inability to accede to the increases to low coffee prices which had led to declaration of redundancy of some 27 employees in 2002. The respondent contended that though the workers were declared redundant in 2002 payment of their benefits commenced in 2005 and that as at October, 2011 there were still arrears that needed to be cleared.

The claimant in its submission repeats the claims contained in the memorandum of claim and tabulates what it regards as its members' entitlements.

According to the claimant, it did everything possible to realize a CBA in good time but the respondent has as it were been dragging its feet. The claimants and respondent submit on the issues in dispute as follows:-

1. Medical allowance

The claimant proposes that this be enhanced from Kshs.400 in the previous CBA to Kshs.1,000. The respondent for its part proposes an increase from Kshs.400 to Kshs.600.

The claimant relies on the rising cost of medical treatment in making their proposal. The respondent for its part contends that the allowance is payable every month by payslip irrespective of whether one gets sick or not hence many employees consider it as salary.

2. Safari and subsistence allowance

Both parties have agreed that the Subsistence and Safari allowance be retained as per the 2006 – 2008 CBA.

3. Percentage increment

The claimant proposed figures in its memorandum of claim which it proposed to form the basic entry points. These have been opposed by the respondent for financial reasons. The respondent instead proposes the adoption of the statutory minimum wage as basic entry point. The claimant resists this suggestion arguing that where parties are engaged in negotiations, statutory wages cannot suffice. According to the claimant the Central Planning & Monitoring Unit (CPMU) of the Ministry of Labour and Human Resource has analysed the dispute from this aspect against the consumer price index and made recommendations.

The claimant for its part concludes that the economic strength of the respondent has been analysed by CPMU and it shows a remarkable economic improvement to warrant the award the claimant is seeking.

As rightly submitted by the respondent, under section 15(5) of the Industrial Court Act, the Court is bound by the national wage guidelines on minimum wages and standards of employment and other terms and conditions of employment issued by the Cabinet Secretary from time to time. In this regard the relevant wage guideline is the one issued by the Minister for Finance on 23rd November, 2005.

Under Guideline No. 2(b) the court is asked to allow wage adjustments to follow the growth of the firm productivity so that productivity forms the major factor for any additional wage compensation consideration.

Guideline number 7 further provides that:

“...ability to pay higher wage should not necessarily be conclusive reason for the increase if it means that one group of workers will increase awards significantly out of step with those being given the other workers of similar skills. Conversely financial inability to pay higher wages should be a factor in determining the level and timing of wage awards.”

Whilst the foregoing are the parameters the court is required to take into account in making any wage awards, they form only the bare minimum below which a court cannot go. However where there is a valid CBA, providing for more superior terms, the court cannot water these down through the strict application of section 15(5) of the Industrial Court Act.

Further, in resolving wage disputes, the court must bear in mind the need to keep wages at a level that

will allow the organization not only to remain sustainable financially but allow room for growth and possibility of creating more jobs. On the other hand and of equal importance, is the need to compensate employees in such a way that they and their families are able to have a decent living evidenced by appropriate shelter, food, clothing and ability to enjoy their basic fundamental rights as human beings.

The respondent has urged the court to order that it for a start, it pays its workers wages in line with wages order guidelines and thereafter negotiate with the claimant on the percentage increment to give to workers.

This court notes that the CBA for the period 2006 - 2008 provided that it would remain in force from month to month until a new one is concluded. In this respect, the court finds that the CBA in issue having been entered into voluntarily by the parties, its terms shall continue to apply until a new one is concluded. The court will not therefore release the respondent from its obligations under the CBA and substitute therefore the wage guidelines.

Concerning the period between 2008 - 2010; whereas the 2006 - 2008 CBA continues to apply, the respondent and the claimant for reasons adumbrated earlier in this judgment are not able to agree hence the intervention of this court.

The CPMU report states that the cost of living index is used to determine wage compensation as dictated by the wage guidelines by the Ministry of Finance. Arising out of these guidelines, the respondent's employees are entitled to 20.2% increment to cover the period between 1st October, 2008 - 30th September, 2009 and a similar increment between 1st October, 2009 - 30th September, 2010.

According to CPMU report, the cost implication of the claimants demand for wage increment would translate into an additional wage bill of Kshs.537,893 in the first year and a further Kshs.630,017 in the second year or a total additional bill of Kshs.1,176,910 for the whole period of the proposed agreement. On the other hand, the respondent's offer would translate to an additional bill of Kshs.54,361 in the first year and a further additional bill of Kshs.55,394 in the second year or a total additional bill of Kshs.109,755 for the whole period of the proposed agreement.

The claimants offer is slightly below the recommendation of the CPMU which places the additional cost implication of 1,272,643 for the two years which work out to Kshs.95,733. The offer by the respondent on the other hand is critically low and seems to send the message that it is really in financial dire straits and if it was to have its way it would make no offer at all. This perhaps explains the reason why the claimant was complaining that the respondent was dragging its feet in concluding the CBA in dispute that led to the current suit.

The CPMU report however notes that the respondent has in the period between 2005 and 2011 had almost a constant number of unionisable staff and a declining trend in labour costs.

The report further notes that the respondent's profitability trend remained consistent throughout the period under review except in 2008 when it recorded net deficits.

Of concern to the CPMU and to this court is the absence of management wage bill due to the absence of management staff. The day to day operations had been tasked to a staff titled as Society Manager who herself was a unionized staff and that there was a Management Committee elected to manage the society and paid sitting allowance. The report however did not disclose the quantum of the allowances and the frequency at which they were paid.

The society, like any well run organization whose aim is profit, require to have someone to run it on a day to day basis. Someone accountable to the Management Committee. Perhaps the absence of such a person could be one of the major reasons why the society's revenue has not significantly improved. It is the court's view that having such person in place creates the possibility of improved revenue that could return the respondent to profitability and build its financial base to enable it pay off longstanding debts owed to workers and service providers.

Having reviewed the issues in dispute and submissions by parties or their representatives, the court makes the following award:-

1. Respondent's unionisable employees shall have an annual increment of 20% per year for the period between 1st October, 2008 to 30th September, 2010.
2. This increment be spread for a period of four years and payable alongside the ruling wage payable to the respondent's employees.
3. The medical allowance shall remain as per the 2006 - 2008 CBA subject to review upwards during the negotiations for the CBA for the current period.
4. The claimant and the respondent do embark forthwith on negotiations for a new CBA covering the current period.

It is so ordered.

Dated at Nyeri this 18th day of September, 2013.

J. N. Abuodha

Judge

Delivered in open Court in the presence of Ms. Macharia for the Claimant and in the presence of Nahashon Wachira for the Respondent.

J. N. Abuodha

Judge