REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1300 OF 2012

AVIATION AND ALLIED WORKERS UNION (K)……..……..CLAIMANT

-VERSUS-

KENYA CIVIL AVIATION AUTHORITY ……..…….RESPONDENT

Mr. Nyabena for Claimant/Applicant.

Mr. Simiyu for the Respondent.

R U L I N G

The application was brought on a Certificate of urgency on 1st August, 2012 seeking for an order in the following terms:

> *"1. That this application be certified as urgent and be heard exparte in the first instance.*
>
> *2. That there be a temporary stay of execution and implementation of the Respondent's letter dated 28th May, 2012 pending the hearing and determination of the application herein.*
>
> *3. That pending the hearing and determination of this application interpartes the Respondent be and is hereby restrained by itself, agents, servants, employees, officers from altering the Claimant members housing terms and increment of house rent as contained in its letters dated 28th May, 2012.*
>
> *4. That pending the hearing and determination of the claim herein the Respondent be and is hereby restrained by itself, agents, servants, employees, officers from altering the Claimant members housing terms and increment of house rent as contained in its letters dated 28th May, 2012.*
>
> *5. That the Claimant and the Respondent be ordered to commence negotiations on the issue in dispute with a view of reaching an amicable settlement.*
>
> *6. That the Honourable Court do issue such orders as the Honourable Court may deem fit and just to grant.*
>
> *7. The costs of the application be borne by the Respondent."*

The Application is grounded on matters outlined in the Notice of Motion as items (i) to (v) and the supporting affidavit of Mr. Rob Abkula the Deputy Secretary General of the Claimant union.

An interim order was issued in terms of prayers 1 and 2 of the Notice of motion.

The Respondent filed a Memorandum of reply and a replying affidavit on 21st September, 2012.

Attempts to reach an out of court settlement delayed the hearing of the matter. The parties agreed to dispense with the same by way of written submissions. The Claimant filed submissions on 4th April, 2013 and then filed written submissions on 23rd April, 2013.

The Claimant/Applicant seeks an interlocutory injunction to stop the Respondent from altering the Claimant members housing terms and increment of house rent as contained in its letter dated 28th May, 2012.

The letters are written to the individual staff by Mr. E.M. Njogu, for the Director General of the Respondent and are titled "*Notice of review of house rent for EASA Staff House …..*"

Other than reviewing the rent, it is also intended to do repairs and renovations to bring the houses to reasonable status.

The increase is justified on the basis of a review by a team drawn from the Ministry of Public Works and the Respondent who established that the rentals were way below the market rate.

The review was meant to take place from 1st August, 2012 and a further increase to take effect from 1st January, 2013.

The Claimant/Applicant oppose the said review on the basis that this is a negotiable matter in terms of the parties Recognition Agreement and a current Collective Bargaining Agreement (CBA) which binds the parties to negotiate and agree on matters touching on terms and conditions of service of the union members.

That the action to review the rentals was tantamount to altering a clause of the Collective Bargaining Agreement unilaterally and is unfair to the Claimant's members whose house allowance has not been adjusted upwards.

That the Respondent's houses are in a deplorable state and need urgent repair before any increment of rent.

That the Respondent will not suffer any prejudice if the interlocutory orders are granted pending the hearing and determination of the claim.

The Collective Bargaining Agreement for the period 5th May, 2011 to 30th June, 2013 is attached to the Application and marked "RAT".

Clause 6.3 on Housing Allowance reads "*Each employee shall be paid a house allowance at the rate provided in appendix III and in accordance with Government Guidelines*." The said appendix III is not attached to the Application.

It is however apparent that the proposed rentals may be way above the current housing allowances of the affected staff who may consequently be unable to pay the Respondent. The Respondent submits that provision of housing is not a matter contained in the current CBA and it is the prerogative of the Respondent to renovate its housing units and review the rents as provided.

That the Claimant's members are given very competitive housing allowance and would have no problem

to meet the proposed rentals.

That adequate notice has been given to absorb the affected staff of any undue inconvenience.

That only 88 out of 653 staff members are housed representing only 13%. That the practice in fact discriminates against 87% of the staff members who are not housed.

It is the Respondent's further submissions that the criteria for grant of an interlocutory injunction is well established since the decision in **Giella vs. Cassman Brown & Co. Ltd [1973] EA 358** that an applicant must show:

0. *a prima facie case with a probability of success;*
0. *that if the injunction is not granted the applicant might otherwise suffer irreparable injury; and*

0. *if the court is in doubt the balance of convenience favours the grant of the relief sought.*

That the Claimant/Applicant has failed to establish the aforesaid prerequisites.

The Respondent justifies its move to increase rentals on market rates adding that the low housing rates applicable now are unjustly enriching the Claimant's members and non members at the expense of the Respondent.

That the Respondent's Human Resource Manual has provisions for housing staff and according to paragraph E19 of the said manual, available institutional houses are to be leased out on a business basis. That this is not a preserve of the Claimant's members only.

That presently the housed staff pay rents lower than their housing allowance and way below the current Government of Kenya rates.

That the Respondent has always negotiated and/or consulted the union over all relevant matters and in the present case the Respondent did negotiate and consult extensively with the Claimant prior to implementation of the new house rents contrary to the allegations by the union.

The court has carefully considered the competing arguments by the parties and is left in doubt as to the current position regarding the matters in dispute outlined hereinbefore.

The court is inclined to determine this matter at the interlocutory stage on the balance of convenience.

It is prudent and convenient to allow the Respondent to renovate its own housing. Having found no specific clause in the parties Collective Bargaining Agreement obliging the Respondent to provide housing to the union members at agreed rentals, the balance of convenience favours the Respondent to implement reasonable rental rates pending the hearing and determination of this matter.

Accordingly the interlocutory orders sought by the Claimant/ Applicants are refused and the court directs that the matter to take its normal course in the hearing and determination of the main claim.

Costs in the cause.

It is so ordered.

Dated and delivered at Nairobi this 6th day of September, 2013.

MATHEWS N. NDUMA

PRINCIPAL JUDGE