REPUBLIC OF KENYA

Industrial Court of Kenya

Application 1-29 of 2007

KENYA ELECTRICAL TRADE & ALLIED

WORKERS UNION…….……………………………APPLICANT/CLAIMANT

VERSUS

KENYA POWER & LIGHTING COMPANY LIMITED……... RESPONDENT

RULING ON THE INTERPRETATION

Mr. I. Kubai Advocate, appeared for the Union "the Applicant" herein, assisted by Mr. Ernest Nadome, the National General Secretary and Mr. Korir, the Deputy National General Secretary of the Claimant Union.

Mr. Harrison Okeche, Advocate from the Federation of Kenya Employers (F.K.E), appeared for "the Respondent".

The Claimant's Interpretation Application was brought under Section 16(5) of the Trade Disputes Act, Cap.234, Laws of Kenya (now repealed) and Section 32 of the Industrial Court (Procedure) Rules 2010, specifically for orders number 1, 3, 4, 5 and 7 at pages 31 and 32 of the Award in Cause No.29 of 2009 delivered on the 27th November, 2009.

Section 16(5) of the Trade Disputes Act, Cap. 234, Laws of Kenya, provides *inter alia*:-

"If any question arises as to the interpretation of an order or as an award being inconsistent with any written law, the Minister or any party to the award may apply to the Industrial Court which made the Award for the determination of the question, and the Court shall determine the matter after hearing the parties concerned, or without hearing if the parties consent, any such determination shall be

deemed to be made under the Act.

Provided that where the question arises out of any clerical mistake, incidental error or omission the court may rectify such mistake, error or omission without hearing the parties concerned."

Ground 1 of the Application that the Respondent had to implement the Court Award first and follow with implementation of the Collective Bargaining Agreement 2009/2010 both effective 1st January, 2009.

Mr. Kubai, the learned Counsel for the Claimant/Union strongly argued that the Respondent should have first implemented Order No.6 of the Award by raising the minimum basic salary for the lowest staff at Grade 12 to Kshs.13,000/- per month effective 1st January, 2009 and follow by implementing the minimum salary agreed between the parties in the Collective Bargaining Agreement for the period 2009/2010 effective the same date, 1st January, 2009 because the dispute in Cause No.29 of 2007 came to court earlier than the Collective Bargaining Agreement.

The Learned Counsel further argued that the Award of the Court was to increase the minimum salary point of UG12 to Kshs.13,000/= with effect from 1st January, 2009 and the parties' Collective Bargaining Agreement 2009/2010 to be raised to Kshs.11,000/= with effect from 1st January, 2009. The parties signed the agreement on 3rd November, 2009 and registered it on the 11th November 2009 raising the minimum from Kshs.7,500/- to Kshs.11,000/-. The same was implemented in the month of November, 2009 and the Applicant's members were paid all the arrears. He further argued that the Award was issued on 27th November, 2009 and implemented in December 2009/January 2010, the staff having the minimum raised to Kshs.13,000/- and arrears paid. He urged the Court to order that on top of the minimum of Kshs.13,000/-, the increase of 6% agreed by the parties in the Collective Bargaining Agreement be added to make it Kshs.16,500/-.

In reply, Mr. Harrison Okeche, Advocate for the Respondent strongly opposed the demand. He stated that the issue did not constitute a matter for the Court to interpret but if the Claimant Union was not satisfied, they were at liberty to file a fresh dispute concerning implementation but not to re-open a matter finalized by Court.

Mr. Okeche further argued that there was a no vexus between the Collective Bargaining Agreement for 2009/2010 and the Court Award. The matter of Collective Bargaining Agreement was not before the Court and at no time, during the hearing of the dispute in Cause No.29/2007 did any party canvass on the issue of negotiations or implementation of the Collective Bargaining Agreement for 2009/2010. The Court could not therefore, be invited at the stage of interpretation into a matter which had not been referred to it in the first instance when the case came up for hearing. He further argued that the Award was to take effect from 1st January, 2009 increasing the minimum from Ksh.7,500/- to Kshs.13,000/- while the Collective Bargaining Agreement was agreed by the parties to take effect on the same date increasing the minimum from Kshs.7,500/- to Kshs.11,000/-. The effect was that the employees benefited in the raising of the minimum to the higher rate given by the award at Kshs.13,000/-. The increases were not cumulative so the question of additional did not arise and therefore, the Award of Kshs.13,000/- as minimum salary for UG12 under Order 6 did not need interpretation.

Ground 2 – that under Order 2 of the Award the Respondent was to implement the Award taking into account the Salary breaks of 50% in 1996/97, 8% in 1987/88 and 6% 1983/84.

Mr. Kubai Advocate for the Claimant Union argued that they had no problem with Order No.2 especially for those in service with upto 12 years. The problem was that of the employees with 13 years of service and above. He stated that the Respondent had not taken into account salary breaks of 50% wage increase in 1996. The employers with 22 years of service be given 8% and those with 26 years of service 6% increase on the new salary structure and scale. That in relation to this those who joined in 2008/2009 were lumped together at the minimum rate without any distinction. The main reason given by the Claimant Union for this demand was that the gaps were created by the Respondent by giving huge wage

increase in 1996 and the other years 1987/88, 1983/84.

In response, Mr. Harrison Okeche, the learned Counsel for the Respondent strongly opposed the Claimant's Union demand and reiterated that the Court Order No.2 was very clear and by consent of the parties. It provided that steps per each job group be graduated by 1% for each year of service. It did not provide that in the 13th year of service the steps should be increased by 50%, at 22nd year of service by 8% and at 26th year of service by 6%. There was nothing mystical or magical about the 13th year, 22nd year or 26th year of service.

Mr. Okeche Advocate further argued that the other factors agreed in accordance with the Order were that the difference between the minimum salary for each job group to be set at 10% and factor 2.5 to be applied on the minimum salary to determine the maximum ceiling for each grade. These two factors had not been challenged.

Mr. Okeche, the learned Counsel for the Respondent argued that the Claimant Union did not define the meaning of *"salary breaks"* and the term did not exist in salary administration, human resource management or personnel management literature. Further, there was no known practice that parties may make reference to the use of the term *"salary breaks"*.

The learned Counsel, further argued that the Claimant Union was pointing out at years of salary breaks where huge wage increments were agreed through Collective Bargaining Agreements i.e. 1996/97, 1987/1988 and 1984/1985. The Collective Bargaining Agreement for these years were not challenged nor was there any dispute reported to Court as the parties had agreed and implemented and therefore, one party cannot come to court and say we agreed but it was unfavourable and seek a replacement of the agreement.

Ground 3 – that in terms of Order 4, the Respondent had to adjust all variable allowances effective 1st January 2009.

Mr. I. Kubai Advocate for the Claimant Union strongly argued that in accordance with Order 4 of the Award, the Respondent had to adjust all the variable payments with effect from 1st January, 2009. He submitted that the variable allowances were to be adjusted and arrears paid. The same applied to overtime, standby allowance, acting allowance and subsistence allowance.

In reply, Mr. Okeche Advocate for the Respondent strongly opposed the demand and stated that the Court did not order that the variable allowances be paid effective 1st January 2009, but ordered the adjustment of the variable allowances from the time of the implementation of the Award to which the Respondent had complied in full.

Upon careful consideration of all the circumstances of this Application for Interpretation including the parties' respective memoranda filed in Court, the volume of appendices, and the authorities thereto as well as the oral submissions, the Court is satisfied that in its Award it ordered the Respondent to implement the job evaluation report with respect to the unionisable employees taking into account the seven points raised.

According to Section 26 of the Labour Institutions Act, 2007, supported by **Rule 32 of the Industrial Court (Procedure) Rules, 2010** provides for grounds of review; namely:-

(a) If there is discovery of new and important matter or evidence that could not be availed at the time of the Award.

(b) There is a mistake or error apparent on the face of the record.

(c) Award, judgment or ruling, requires clarification.

(d) For any other sufficient reason.

The Court observes that the Claimant Union did not point out any issues that fell on or within these grounds. All the Orders that the Court gave with an exception of two out of the seven were by consent agreement presented to Court by the parties i.e. Orders 1, 2, 3, 4, 5 at page 30, 31 and 32 of the Award were by Consent Agreement (see the Court's record of submissions and prayers of the Claimant Union at page 13 of the Award. The Claimant's Union prayer No.(ii) became Orders number 1 at page 31, prayer No.(iii) became Order number 2 at page 31, prayer No.(v) became order Number 3 at page 31 and prayer No.(vi) became Order number 4 at page 31. The Court could not, therefore be asked to interpret the parties' Consent agreement which was not inconsistent with any written law or ridden with fraud, misrepresentation or mistake. The parties had freely consented.

The Court made a determination on the dispute and parties should honour the Award unless the Award is vague or doubtful, it should not be re-opened. In essence, the Court should not be made to revisit its decision unless for very cogent and weighty reasons.

Therefore, the Court find that the Claimant Union has not shown what is doubtful and vague about the consent agreement they presented to Court. They have not established any valid and legal cause to warrant the Court to interfere with its initial Award.

Accordingly, the Claimant's Application for Interpretation of the Award is hereby dismissed.

No Orders as to costs.

DATED and **DELIVERED** at **NAIROBI** this16th day of November, 2012

Onesmus N. Makau
JUDGE