**Banking, Insurance & Finance Union [Kenya] v Harambee Sacco Society Limited (Cause E122 of 2024) [2025] KEELRC 194 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 194 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE E122 OF 2024**

**J RIKA, J**

**JANUARY 31, 2025**

**BETWEEN**

**BANKING, INSURANCE & FINANCE UNION [KENYA] ................ CLAIMANT**

**AND**

**HARAMBEE SACCO SOCIETY LIMITED ...................................... RESPONDENT**

## JUDGMENT

1. The Parties herein, have a Recognition Agreement, executed on 10th September 1996.
2. They have subsequently, negotiated and recorded several Collective Bargaining Agreements [CBA].
3. The last CBA covered the period 1st January 2019 to 31st December 2022.
4. The dispute arose between the Parties, on certain collective bargaining subjects, contained in the proposed CBA review, for the period 1st January 2023 to 31st December 2026.
5. They appeared before a Conciliator at the Ministry of Labour, where the issues in dispute were narrowed down.
6. The unresolved issues, submitted before the Court, are on annual leave allowance, salaries and wages.
7. The Claimant filed the Statement of Claim dated 14th February 2024. Its demand is that the Respondent grants general wage increment as follows: -
    i. Effective 1st January 2022... 10%
    ii. ‘’ 1st January 2023 ... 10%
    iii. ‘’ 1st January 2024 ...10%
    iv. ‘’ 1st January 2024 ... 10%

8. The Respondent counter-offers 1% increment for each year.

9. The Claimant submits that the current Wage Guidelines, provide for general wage compensation based on rise in cost of living indices; wage differential; and productivity.

10. The Wage Guidelines provided for 100% compensation for rise in cost of living. The rise in cost of living for the 4 years under review, is 7.13%.

11. Productivity for the Respondent, for period ended December 2022 was very high at 29.9%. The 3 factors of production, have a 10% share each in this productivity. The Claimant's demand for 10% wage increment is therefore well-founded.

12. On annual leave allowance, the Claimant submits that it has not proposed change to the prevailing clause 17 [b] of the CBA. The clause pegs annual leave allowance to equivalent of 1-month basic salary. The Respondent proposes to pay Kshs. 15,000 as annual leave allowance across the board. The proposal by the Respondent is not justifiable, and would infringe sections 10 [3] of the *Employment Act*, and section 59 [3] of the *Labour Relations Act*.

13. The Claimant prays for wage increment at 10% annually, and annual leave allowance clause in the outgoing CBA, to be preserved.

14. The Respondent informed the Court on 24th June 2024 that it had filed its Statement of Response. At the time of preparing this Judgment, the Court has not traced a copy of the physical Statement of Response in the file.

15. The dispute was referred to The Central Planning and Project Monitoring Department [CPPMD]. Both Parties were consulted by CPPMD and a professional analyses of the economic issues in dispute, made.

16. An expert Report dated 18th September 2024, signed by Economist Benson Okwayo for the CPPMD was filed before the Court, and shared with the Parties.

17. Parties were directed by the Court, on 20th September 2024, to file their closing submissions based on the Report filed by the CPPMD.

18. The Claimant confirmed filing and service of its submissions at the last mention before the Court on 24th October 2024. The Respondent had not filed its submissions as of the last mention date, and gave an undertaking to do so, within 3 days.

19. The file as transmitted to the trial Judge, who has since been transferred from the trial station, does not contain submissions filed by the Respondent.

**CPPMD Report.**

20. The Report shows the number of unionisable staff in 2021 at 55 Employees; 73 in 2022; and 72 in 2023. The ratio of unionisable to management staff was noted to be almost 1:1.

21. The total annual labour cost stood at Kshs. 364.6 million and rose to Kshs. 450.2 million in 2023.

22. The annual wage bill for unionisable staff, stood at Kshs. 57.3 million in 2021; Kshs. 65.8 million in 2022; and Kshs. 66.3 million in 2023. The increase reflects the ebb and flow in the staff, numbers and the cost of implementing previous wage increments.

23. The Respondent's financial position has been analysed in the Report. Its total interest income stood at Kshs. 3.4 billion in 2021; Kshs. 4.1 billion in 2022; and rose to Kshs. 4.7 billion, in 2023.

24. The annual net interest income was Kshs.1.9 billion in 2021; Kshs. 2.4 billion in 2022; and Kshs. 2.8 billion in 2023.

25. The Respondent recorded a total comprehensive income of Kshs. 350.2 million in 2021; Kshs. 444.5 million in 2022; and Kshs. 804.5 million in 2023.

26. The expert confirms that the Respondent is centred in Nairobi, with major branches in urban centres, placing the Claimant's members under the New Kenya CPI Group, with a CPI of 28.99 % or 7.5% compensation in each year in respect of inflation.

27. Compensation on inflation, at 7.5 % each year, would result in wage bill increase of Kshs. 4.81 million in the first year; Kshs. 5.16 in the second; Kshs. 5.3 in the third; and Kshs. 5.93 in the fourth year, amounting to Kshs. 21.43 million, in the proposed 4-year period.

28. Wage guideline 2, requires that productivity forms the major factor, for any wage increment. The Report concludes that there have not been huge profits in the period under review, but neither has the Respondent posted losses.

29. On the third factor of wage differential, the Report did not find huge wage disparities within the Respondent, or the relevant industry / sector.

30. The Report indicates that the Claimant seeks wage increment of 2% for each year. 2% increase spread over a period of 4 years, would result in a total wage increment of 5.47 million.

31. The Respondent made its offer of 1% increase in the first 3 years, and 2% in the 4th year, which would translate to a total wage increment of Kshs. 3.37 million.

32. As observed earlier in the Report, if compensation on CPI is applied on the unionisable staff wage bill for the year 2023, it would result in a total increase of Kshs. 21.43 million for the 4 years.

33. On leave allowance, the Claimant seeks retention of the status quo. The Respondent informed CPPMD that it was experiencing serious challenges, and was unable to sustain annual leave allowance at the rate of 1-month basic salary. It proposes Kshs. 15,000 across the board.

**The Court Finds: -**

34. The Respondent has not justified its proposal for a shift in the payable annual leave allowance. There is no justification for payment of Kshs. 15,000 annual leave allowance, to all unionisable staff, regardless of their monthly basic earnings. The Respondent's financial position was assessed to be stable, and nothing has changed, or is projected to change, so as to standardize annual leave allowance, payable to all grades, at the rate of Kshs. 15,000.

35. The unionisable staff are resident in different job grades, and their basic salaries are different. There are those who have worked longer, and have higher rates of remuneration. Annual leave allowance as a benefit, should recognize that Employees are not similarly graded, they do not share the same number of creditable years of service, and it would be distortive, to assign them standardized annual leave allowance.

36. Clause 17[b] of the outgoing CBA confers annual leave allowance equivalent of 1-month basic salary. The Court agrees with the Claimant, that the proposal by the Respondent, to pay a standardized annual leave allowance of Kshs. 15,000, would infringe Sections 10[3] and 26 of the *Employment Act*.

37. On wage increment, there is an inconsistence between the position taken by the Claimant before the Court, and its position as stated in the CPPMD Report on record.

38. The Claimant pursues 10% wage increment for each of the 4 years. The Report suggests that the Claimant seeks 2% increment for each year.

39. The Claimant submits that the Report is erroneous [page 3 of the submissions] and confirms it seeks 10% wage increment for each year.

40. There is no dispute that the CPI based on the New Kenya CPI, is 28.99. In cost of living compensatory terms, it translates to 7.5% each year.

41. On productivity, the Claimant submits that it only seeks 3% compensation. Added to cost of living compensation at 7.5%, the Claimant seeks a rounded figure of 10% wage increment for each year. CPPMD found that the Respondent experienced productivity of 20.6 % in the year 2022.

42. The CPPMD Report states that workers, should get a share of wealth they have helped the Respondent create. Wage guideline number 2, requires that productivity is a major compensatory factor.

43. Wage guideline number 1, binds this Court to endeavour to decide levels of wage earners' remuneration, that will protect the desired minimum standard of living, and guarantee the worker an existence worthy of human dignity, as shown by attainment of basic human needs. The guideline has anchorage, in Article 43 of *the Constitution*, which confers all persons the right to among others, the highest attainable standards of health; accessible and adequate housing; to be free from hunger; and to have adequate food of acceptable quality. It is the role of the Court under the guidelines to ensure that Employees are not paid what historically, has been pejoratively described as 'starvation wages,' while delicately balancing wage increment, with the Employer's ability to pay.

44. The outgoing CBA under clause 34, notably, grants all staff annual salary increments of 5% subject to the maximum of their respective scales. There is therefore, already an annual cost of living adjustment [cola] mechanism, afforded to the Claimant's members. The Claimant did not submit on this clause, which grants 5% salary increment, thereby cushioning its members against the rise in CPI.

45. The Claimant's silence on the existing CBA clause 34, gives credence to the Marxist postulation that, wages are the price of labour-power, not labour. The Claimant seeks to exercise its collective bargaining muscle to extract the best outcome for its members from the Respondent, without looking holistically at the current range of benefits.

46. Having taken into consideration all the relevant factors as analysed by the Parties with the aid of the CPPMD, the Court awards wage increment on CPI at 2.5% for each year, and on productivity at 1.5% for each year, amounting to wage increment of 4.0 % for each of the 4 years, beginning 1st January 2023.

47. No order on the costs.

**In sum, it is ordered: -**

a. General Wage Increment is awarded at 4.0 % for each of the 4 years, beginning 1st January 2023.

b. Clause 17 [b] of the outgoing CBA is preserved, with annual leave allowance to continue being paid, at the rate of equivalent of 1-month basic salary.

c. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025.**

**JAMES RIKA**

**JUDGE**