

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E982 OF 2023**

**KENYA      CHEMICAL      WORKERS      UNION.....**  
**.....CLAIMANT**

**VERSUS**

**BETA HEALTHCARE INTERNATIONAL LTD.....**  
**RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before Court is the Claimant's Amended Statement of Claim dated 30<sup>th</sup> November, 2023 wherein, the Claimant sued the Respondent for non-implementation of CBA and seeks the following reliefs: -
  - a) The Respondent be compelled to implement the registered CBAs under RCA NO. 46 of 2019;
  - b) Accrued benefits under the CBAs to be paid by the Respondent amounting to Kshs.49,252,260.76/=;
  - c) Interest at court rates from the effective dates under the CBAs until payment in full;
  - d) That the Court does issue a declaration that the Respondent is in breach of the Claimant's members right under Article 41 of the Constitution of Kenya;

- e) That the Honourable court be pleased to order the Respondent to cease, stop and/or refrain from practicing unfair labour practices to its workers by denying them their right to enjoy their negotiated and Registered Collective Bargaining Agreements;
  - f) An order be issued restraining the Respondent and or its agents from harassing and intimidating and/or coercing the Claimant's members on the basis of this litigation;
  - g) Damages for breach of the Claimant's members Constitutional rights as enshrined in 41 of the Constitution of Kenya 2010;
  - h) Costs and Interest of this cause at court rates; and
  - i) This Honourable Court be pleased to grant any further orders that it might deem fit, fair and just.
2. In response, the Respondent filed a Statement of Response to the Memorandum of Claim dated 6<sup>th</sup> March, 2024. Conversely, the Claimant filed a Reply to Response dated 20<sup>th</sup> May, 2024.
3. Both the Claimant's case and the Respondent's cases were heard on 13<sup>th</sup> May, 2025. The Claimant presented four (4) witnesses -the grievants herein, and the Respondent presented the testimony of one Gurcharan Singh Matharu, their Regional Head to support their case. The witnesses adopted their Witness Statements and produced their List and bundles of documents and Further list and bundle of documents as exhibits in the matter.
4. Submissions were received from both parties.

## **The Claimant's case**

5. The Claimant avers that it has a valid Recognition Agreement with the Respondent, pursuant to which the parties have successfully negotiated and concluded several Collective Bargaining Agreements (CBAs). It avers that the current CBA was duly signed by the Claimant Union on 28<sup>th</sup> January 2019 and by the Respondent on 13<sup>th</sup> February 2019, and subsequently registered by this Honourable Court on 6<sup>th</sup> March 2019, thereby becoming binding upon both parties.
6. The Claimant avers that despite repeated persuasion and reminders, the Respondent has refused, failed, and ignored to implement the said CBA as required under Section 59(5) of the Labour Relations Act, 2007, which mandates employers to implement registered CBAs promptly. That the Respondent's persistent non-compliance, compelled the Claimant Union to report a trade dispute to the Cabinet Secretary, Ministry of Labour on 24<sup>th</sup> November 2022.
7. It is the Claimant's case that following the report, and in accordance with Section 62(1) of the Labour Relations Act, 2007, the Cabinet Secretary appointed Mr. Nelson Kimeu as Conciliator on 22<sup>nd</sup> December 2022. It states that the Conciliator convened the first meeting on 1<sup>st</sup> February 2023, which the Claimant attended, but the Respondent failed to attend, and that it was later established that Mr. Kimeu had retired, prompting the Claimant to request the appointment of a new conciliator.

8. The Claimant states that consequently, the Cabinet Secretary withdrew the appointment of Mr. Kimeu and appointed Mr. Laurent Mulwa of the Industrial Area Labour Office as the new Conciliator. It states further, that Mr. Mulwa convened his first conciliation meeting on 4<sup>th</sup> October 2023, which the Respondent again failed, refused, and ignored to attend.
9. It is the Claimant's case that the Respondent wrote to the Ministry claiming that the conciliation period had lapsed and even called the Conciliator to put off the meeting. It avers that a second meeting was scheduled for 11<sup>th</sup> October 2023, but the Respondent again, failed to attend despite having received and acknowledged the invitation.
10. The Claimant states that after several unsuccessful attempts to secure the Respondent's participation, the Conciliator issued a Certificate of Unresolved Trade Dispute dated 30<sup>th</sup> October 2023, which the Claimant Union accepted and responded to by a letter dated 1<sup>st</sup> November 2023.
11. The Claimant Union states that ten (10) of its members have not had their salaries adjusted in accordance with Annex B of the CBA, and that the Respondent has further failed to implement provisions under Clauses 4.1 and 4.2 (annual paid leave) and Clauses 18.0, 18.1, 18.2, and 18.3 (leave travelling allowance). The Claimant therefore

demands payment of the outstanding differences to align with the terms of the registered CBA.

12. The Claimant contends that from the date of registration on 6<sup>th</sup> March 2019, the Respondent was under a legal obligation to implement the CBA without delay, and its continued refusal amounts to a breach of statutory duty and contempt of lawful process.
13. The Claimant urges this Honourable Court to take deterrent action against the Respondent, submitting that it has established a prima facie case and that the balance of convenience lies in favour of the Claimant Union.
14. In its Reply to Statement of Response, the Claimant reiterates that both parties voluntarily executed a valid Collective Bargaining Agreement (CBA) covering the period 1<sup>st</sup> April 2018 to 30<sup>th</sup> March 2021, which remains in force and unamended to date. The Claimant insists that the Respondent has failed to fully implement the said CBA.
15. It is the Claimant's position that the Respondent's claim of implementing the CBA is false and misleading, as the employees' salaries do not correspond with the rates prescribed in Annex B of the CBA. Instead, the Respondent continues to pay lower rates as reflected in its own document marked BHIL 02, contrary to the agreed terms.
16. The Claimant admits that Mr. Evans Onsongo, one of the affected employees, has since been terminated, but

maintains that his case remains valid since it directly affects his terminal benefits under the disputed CBA. It avers that the other nine (9) affected employees currently in the Respondent's employment are: Samuel Ngigi Muturi, Stephen Mutiva, Felix Muli, Fredrick Mutua, Frankline Musonye, Simon Kariuki, Macdonald Jumba, Benedict Kasee and Stanslaus Mativo.

17. The Claimant avers that all the above employees joined the Union on diverse dates and that evidence of their membership and payment of union dues through direct cash remittance is available and annexed in the Claimant's further bundle of documents.
18. Accordingly, the Claimant maintains that all the subject employees are bona fide union members entitled to benefit from the negotiated, signed, and registered CBA for 2018-2021, and that the Respondent's continued failure to implement it amounts to breach of the binding agreement and violation of labour law obligations.
19. The Claimant prays that this court allows its claim as prayed.

### **The Respondent's case**

20. The Respondent avers that the alleged non-implementation of Collective Bargaining agreement (CBA), relates to specific clauses of the CBA, namely Clauses 1.2.1, 1.2.2, and 1.2.3 (annual percentage salary increments), Clauses

4.1 and 4.2 (annual paid leave), and Clauses 18.0, 18.1, 18.2, and 18.3 (leave travelling allowance).

21. While acknowledging the existence of the Union and its members within the workforce, the Respondent clarifies that only nine (9) employees are currently members of the Claimant Union, and that as at 30<sup>th</sup> March 2021, only two (2) employees—Mr. Samwel Muturi Ngigi and Mr. Simon Kariuki Maina—were members of the Union.
22. It is the Respondent's case that the remaining seven (7) employees joined the Union after the expiry of the CBA, on various dates in 2022, and are therefore not covered by the CBA for the period in question. The Respondent thus maintains that the 2018-2021 CBA only applies to Mr. Samwel Muturi Ngigi and Mr. Simon Kariuki Maina, and that the claims relating to the other employees fall outside the scope of the said CBA.
23. On the question of implementation, the Respondent avers that it fully complied with the CBA provisions during the relevant period. It states that it has provided a detailed tabulation confirming 12% annual salary increments for the two eligible employees between April 2018 and April 2021, supported by their payslips. The Respondent further states that the said employees enjoyed their 22 days of annual paid leave and received leave travelling allowances of KES 9,400 per year, as evidenced by their payslips and leave records.

24. The Respondent states that it has fulfilled all its obligations under the applicable CBA, including those under Clauses 1.2.1-1.2.3, 4.1-4.2, and 18.0-18.3, and denies any refusal or failure to implement the agreement.
25. Regarding the conciliation process, the Respondent asserts that it has consistently cooperated and acted in good faith, contrary to the Claimant's portrayal. It argues that the Conciliator ignored critical legal issues raised in its letter dated 9<sup>th</sup> October 2023, which highlighted that the dispute had been reinstated in contravention of Section 69(b) of the Labour Relations Act, 2007, since the 30-day statutory conciliation period had lapsed more than eight months prior, and there was no mutual agreement for an extension.
26. The Respondent further contends that the conciliation process was misused by the Claimant, who allegedly weaponized it through bad faith engagement, coercion, and intimidation, undermining the principles of fairness and due process.
27. It states that conciliation, being a statutory process, must adhere strictly to legal timelines and procedural fairness under both the Labour Relations Act and Article 159(2)(b) of the Constitution of Kenya, 2010.
28. It is the Respondent's case that it has fully complied with the applicable CBA, and that the claim is frivolous, vexatious, and an abuse of court process, and that it fails to meet the threshold for the reliefs sought.

29. The Respondent prays that the Claim be dismissed with costs, asserting that the Claimant is not entitled to any of the remedies sought in the Memorandum of Claim.

### **The Claimant's Submissions**

30. It is the Claimant's submission that the parties herein are bound by a valid and subsisting Recognition Agreement, and have negotiated and concluded multiple Collective Bargaining Agreements (CBAs) in good faith, the latest of which was registered as RCA No. 46 of 2019 on 6<sup>th</sup> March 2019.

31. The Claimant submits that the CBA came into effect on 1<sup>st</sup> April 2018 and was to remain operational for 36 months up to 31<sup>st</sup> March 2021, with a continuation clause that provides that the agreement remains in force until amended. The Claimant therefore submits that the CBA remains valid, binding, and enforceable, having not been amended or revoked.

32. It is the Claimant's submission that it relied on Clause 23.0 of the CBA, and the "Subject Matter" clause which expressly provided that the terms and conditions of the CBA apply to all unionisable employees of the company covered by the Union's registered constitution and the Recognition Agreement.

33. The Claimant further submitted that Section 59(1)(b) of the Labour Relations Act, 2007, binds all unionisable employees employed by an employer who is party to a registered CBA. It was submitted that all ten (10) grievants were employees of the Respondent and served during the subsistence of the said CBA.
34. The Claimant submits that the Respondent breached the CBA and violated the grievants' labour rights by implementing its terms selectively and discriminatorily. It was argued that the Respondent extended benefits to some employees while excluding others, contrary to Section 5 of the Employment Act, 2007, and Article 41(1) of the Constitution of Kenya, which guarantee fair labour practices and prohibit discrimination in employment.
35. The Claimant contended that such discriminatory enforcement undermines the principles of fairness, equality, and non-discrimination and is inconsistent with the constitutional values of social justice, human dignity, and the rule of law.
36. It is the Claimant's submission that once a CBA is duly negotiated, signed, and registered, it acquires the force of law and is binding on both the employer and the union, citing Section 59 of the Labour Relations Act and several judicial authorities including ***Kenya Airways Ltd v Aviation & Allied Workers Union (2014) eKLR*** and ***Kenya Union of Commercial, Food & Allied Workers v Gikambura Dispensary [2012] eKLR*** where the courts

held that a registered CBA is legally binding and must be implemented fully and without delay, failure of which constitutes a breach of statutory and contractual duty.

37. The Claimant further sought reliance in ***NUMSA v Bader Bop (Pty) Ltd [2003] 1 BLLR 1 (CC)*** decision of the South African Constitutional Court, which affirmed that once a CBA is concluded and registered, it becomes enforceable and any failure to implement it amounts to a violation of workers' rights.
38. The Claimant invoked ILO Conventions No. 87 and 98, and Recommendation No. 91 (1951), which obligate employers and unions to implement collective agreements faithfully as a matter of international labour standards.
39. The Claimant further submitted that under Article 41(2) of the Constitution, every worker has the right to fair remuneration, to join a trade union, and to engage in collective bargaining and the Respondent's failure to fully implement the CBA, constitutes a violation of these constitutional guarantees and deprives employees of the benefits secured through collective negotiations.
40. The Claimant further cited Section 10(3) of the Employment Act, which provides that the terms of a collective agreement form part of the contract of employment, reinforcing the mandatory nature of the CBA.

41. It is the Claimant's submission that courts have consistently held that non-implementation of a registered CBA constitutes a violation of workers' legal and constitutional rights, and employers are obligated to comply fully with its terms.

### **The Respondent's Submissions**

42. The Respondent submits that Annex B does not create binding or enforceable obligations separate from the substantive clauses of the CBA. It submits further, that Annex B serves only as an illustrative tool, showing the effect of the 12% annual increments provided under Clause 1.2, and not as a salary schedule to be directly implemented.

43. It is the Respondent's submission that the binding terms of the CBA are contained in its main body, particularly Clause 1.2, which explicitly sets the 12% increment.

44. It is the Respondent's contention that the Claimant's interpretation seeks to rewrite the CBA by turning a demonstrative annex into an independent wage structure, contrary to settled principles of contract interpretation. Citing ***National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR***, the Respondent argues that a court cannot alter or insert terms not agreed upon by the parties.

45. The Respondent further contends that adopting the Claimant's view would lead to unrealistic salary escalations

ranging between 58% and 314%, unsupported by any clause in the CBA, and inconsistent with prior CBAs signed between the parties.

46. The Respondent submits that it fully implemented the 12% annual salary increments as required under Clauses 1.2.1 to 1.2.3 of the CBA for the period 1<sup>st</sup> April 2018 to 30<sup>th</sup> March 2021.
47. The Respondent submitted that it complied in full with the leave provisions of the CBA. It asserts that the affected employees utilized their 22 days of paid annual leave during each year of the CBA period, as evidenced by leave application forms, approval letters, and leave records.
48. It is the Respondent's submission that none of the affected employees had attained 16 years of continuous service as of 30<sup>th</sup> March 2021, which was the qualifying threshold for the enhanced 24 days' leave under Clause 4.2 of the CBA. Accordingly, the Respondent maintains that it did not violate the CBA terms relating to annual leave.
49. The Respondent submits that it complied fully with Clauses 18.0 to 18.3 of the CBA regarding leave travelling allowance. It produced evidence showing that each of the two covered employees received KES 9,400/= annually whenever proceeding on leave during the CBA period. It submits that the payments reflected in their payslips, and demonstrate adherence to the CBA provisions.

50. The Respondent therefore denies any failure or refusal to pay leave travelling allowance and contends that the Claimant's allegations are unfounded and unsupported by evidence.

51. The Respondent finally submits that it has fulfilled all its obligations under the CBA and that the Claimant's allegations stem from a misinterpretation of Annex B and reliance on inadmissible and exaggerated figures. It maintains that the conciliation process was mishandled, hence the claim is frivolous and without merit, and prays that the Court dismisses the Claim with costs.

### **Analysis and Determination**

52. The following issues fall for determination:

- i. Whether Annex B of the CBA registered as RCA No. 46 of 2019 creates enforceable obligations;
- ii. Whether the Respondent breached the Collective Bargaining Agreement (CBA),
- iii. Whether the grievants are entitled to the reliefs sought

### **Whether Annex B of the CBA registered as RCA No. 46 of 2019 creates enforceable obligations.**

53. Annex B of the CBA between the parties herein, carries a wage and grading structure which details the applicable employee wages and the annual increments applicable in the three years that the CBA was in force (1/4/2018-31/3/2021). Further, Clause 1.2 of the subject CBA provides that the full details of job gradings and wages structure shall be as per Annex B.

54. There is therefore no doubt that ANNEX B formed part of the CBA between the parties, and it would follow that failure to implement the wage increments in accordance with ANNEX B read together with the substantive clauses of the CBA, would give rise to enforceable obligations against the defaulting party.

55. I concluded by holding that ANNEX B of the CBA, applies together with the substantive CBA, and not separately as the Claimant suggests.

**Whether the Respondent breached the Collective Bargaining Agreement (CBA)**

56. The Claimant Union's position is that ten (10) of its members have not had their salaries adjusted in accordance with Annex B of the CBA, and that the Respondent has further failed to implement provisions under Clauses 4.1 and 4.2 (annual paid leave) and Clauses 18.0, 18.1, 18.2, and 18.3 (leave travelling allowance). The Claimant therefore demands payment of the outstanding differences to align with the terms of the registered CBA.

57. The Claimant further contends that from the date of registration of the CBA (6<sup>th</sup> March 2019) the Respondent was under a legal obligation to implement the CBA without delay, and its continued refusal amounts to a breach of statutory duty and contempt of lawful process.

58. It is the Claimant's assertion that all the subject employees are bona fide union members entitled to benefit

from the negotiated, signed, and registered CBA for 2018–2021, and that the Respondent’s continued failure to implement the CBA, amounts to breach of the binding agreement and a violation of labour law obligations.

59. On its part, the Respondent contends that it fully implemented the 12% annual salary increments as required under Clauses 1.2.1 to 1.2.3 of the CBA for the period 1<sup>st</sup> April 2019 to 30<sup>th</sup> March 2021, and further that it equally complied in full with the leave provisions of the CBA. It asserts that the affected employees utilized their 22 days of paid annual leave during each year of the CBA, as evidenced by leave application forms, approval letters, and leave records.

60. The Clauses of the CBA that are subject of this suit, are Clauses 1.2.1 to 1.2.3 on salary increment, Clauses 4.1 and 4.2 on annual leave entitlement, and Clauses 18.0, 18.2, and 18.3 on leave travel allowance.

61. As correctly submitted by the Claimant, once a CBA is duly negotiated, signed and registered, it acquires the force of law and is binding on both the employer and the union.

62. It is the Respondent’s position that only nine (9) employees are currently members of the Claimant Union, and that as at 30<sup>th</sup> March 2021, only two (2) employees - Mr. Samwel Muturi Ngigi and Mr. Simon Kariuki Maina were members of the Union.

63. From the check-off forms detailed in the Court record, it is evident that Mackdonald Ndalo joined the Claimant union on 31<sup>st</sup> January, 2022, Stephen Ndeto Mutavi and Mutua Wambua joined on 10<sup>th</sup> February, 2022, Benedict Kinyili, Robert Mosongo Abisai on 18<sup>th</sup> February, 2022, Frankline Musonye on 21<sup>st</sup> February, 2022, while Onsongo Evans, Stanslaus Mativo, Paul Onchari and Felix Muli joined on 21<sup>st</sup> January, 2022, being the dates, the check-off forms were forwarded to the Respondent/employer.
64. This goes to confirm the Respondent's assertion that the named employees were not members of the Claimant union during the life of the CBA, having joined the union between January and February, 2022 while the CBA lapsed in March, 2021.
65. The question then that the court is left with, is whether the Respondent implemented the CBA in respect of the two (2) employees namely; Mr. Samwel Muturi Ngigi and Mr. Simon Kariuki Maina, who were members of the Claimant Union during the life of the CBA.
66. From the pay slips produced in evidence, Samwel Muturi Ngigi was earning a consolidated salary of Kshs.84,222 in 2019, Kshs.94, 328 in 2020 and Kshs.105,180 in the year 2021. Simon Kariuki on the other hand, was earning Kshs.47,357 in 2019, Kshs.53,040 in 2020 and Kshs.59, 142 in 2021.

67. Although it was not clear to the court what job grades the two employees served under, it is evident that the grading and wages stated in ANNEXT B of the CBA did not apply to any of the two employees as there was no grade that earned what the two grievants earned.
68. In the circumstances, I find and hold that the Respondent did not fully implement the CBA in respect of Samwel Muturi Ngigi and Mr. Simon Kariuki Maina.
69. I note that the Claimant did not attempt to specifically state which grievant was owed what, and instead, stated a global figure of Kshs.49,252,260.76.
70. I in the circumstances, direct the parties herein, to compute the amounts owed to Samwel Muturi Ngigi and Mr. Simon Kariuki Maina on account of salary for the years 2019, 2020 and 2021 and to proceed and file the computation for adoption by court on a later date.
71. On the issue of leave pay, it is evident from the record, that Samwel Muturi Ngigi joined the employ of the Respondent in 2015 while Mr. Simon Kariuki Maina joined 2011, hence none of them as correctly submitted by the Respondent, has been in the service of the Respondent for 16 years or beyond as to qualify for 24 days of leave. Further, the pay slips and the leave forms placed before court show that the two were paid as per the CBA on account of leave travel allowance.

72. The Claimant's assertions in relation to leave days and leave travel allowance, are therefore baseless and legally unsupported.

73. The Court finally notes that Clause 23.0 of the CBA relates to the effective date of the CBA, and not 'subject matter' hence the Claimant's submission that the clause provides that the CBA applies to unionisable employees, is nothing but an attempt at misleading this Court.

74. In the final analysis, the Claimant's claim succeeds only in respect of the salary underpayment for Samwel Muturi Ngigi and Mr. Simon Kariuki Maina, which amount should be computed and filed in court for adoption within 30 days of this judgment.

75. The rest of the claim is dismissed.

76. Parties shall bear their own costs of the suit.

77. Judgment accordingly.

**DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Gwako present for the Claimant

Mr. Odete present for the Respondent

Esther S - C/A

ORIGINAL