

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

(Before Hon. Lady Justice Monica Mbarũ)

CAUSE NO.E006 OF 2024

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

ENGINEERING SUPPLIES LIMITED.....RESPONDENT

RULING

The Claimant and the Respondent have a Recognition Agreement. They have negotiated various collective agreements (CBAs), and the last was signed on 21 October 2011.

The Claimant registered a dispute on the refusal of the Respondent to review the CBA in terms of the following:

1. General wage increment.
2. Basic minimum wages.
3. House allowance.
4. Leave travelling allowance.
5. Safari allowance.

6. Sick leave.
7. Redundancy benefits.
8. Maternity/paternity leave.
9. Death of an employee.
10. Effective date.

The court heard the parties with judgment delivered on 20 February 2025. Parties were further directed to attend and renegotiate the outstanding items before the Labour Officer. Further negotiations were held and most items were resolved.

Parties attended before a Conciliator and addressed the issue, and what is before court for determination are two items:

- a) General wage increment.
- b) Effective date.

On these two items, parties filed written submissions.

The Claimant submitted that on the general wage increment, it has proposed 15% year 1 and 15% year 2 on the basis that the last wage increment was 10% in 2011 and 10% in 2012. The Respondent has not filed any audited accounts for the Claimant's consideration.

The Claimant submitted that, due to inflation and a comparison of other CBAs with similar and related companies, including the Respondent, the proposed amount is fair and reasonable. At Mabati Rolling Mills, which is outside the city, the lowest-paid employee in 2020 earned Ksh. 19,150, but the Respondent pays Ksh. 16,500. Both companies are situated outside the city.

8% each year and 7% for the next year of CBA increments due to reviews which came during the COVID pandemic.

The last position of 5% 1st year and 5% 2nd year is more reasonable and merited taking into account the last CBA was signed in 2012.

The Court in **ELRC Cause No. 31 of 2019 (Kisumu), Kenya Engineering Workers Union v Abyssinia Iron and Steel Limited**, held that the subject CBA applied to several employees within the industry in which the Respondent was operating. Hence, similar terms would be fair to ensure uniformity of standards.

The Claimant thus proposes a 5% wage increase in the 1st year and another 5% in the 2nd year.

The Claimant submitted that the effective date should be 1 March 2020, when it forwarded proposals for CBA review, 7 years after the last CBA. The judgment date of February 2025 is thus covered; hence, the effective dates for the CBA should be 1st March 2020 to February 2025. The time required to review the general wage increase should be factored into the effective date.

The Claimant is also seeking costs to be assessed at Ksh. 150,000.

The Respondent submitted that of the seven (7) items for negotiations, judgment was delivered on 20 February 2025. The court held that:

- a) The CBA is in force to apply until renegotiations within 90 days.
- b) Parties to report back to court on 20 May 2025.
- c) Basic wage retained at 12% of the basic wage.
- d) House allowance at 30% of the basic wage.
- e) Leave travelling allowance at Ksh. 5,600.
- f) Other clauses to be renegotiated.
- g) Each party to bear its costs.

The Respondent submitted that parties attended a conciliation over pending items:

- a) General wage increase.
- b) Safari allowance.
- c) Sick leave
- d) Redundancy benefits
- e) Gratuity benefits
- f) Maternity leave/paternity leave.
- g) Death of an employee
- h) Effective date and duration.

The Respondent submitted that, following several meetings, most items were agreed upon and are set out in the Conciliator's report. The only outstanding items are:

- a) General wage increment.
- b) Effective date and duration.

The claim has sought a 5% general wage increment, effective as of 20 February 2025, to cover the term of the CBA. However, the Respondent seeks a general wage increase of 2%, effective as of the CBA signing date.

The claim compares the Respondent to other, dissimilar industries. The 2% rate is permissible, given current wages and affordability. The effective date can only arise from the date of signing the CBA, which gives effect to its provisions. The mandate of the Claimant union is solely to ensure peaceful industrial relations; hence, the CBA's effective date is the date agreed upon by the parties.

The claim for costs is not justified and hence should be dismissed.

Determination

Following the judgment herein, the court allowed parties to attend before the Labour Officer to negotiate items not agreed upon. Most have since been resolved, save for two items:

- a) General wage increment.
- b) Effective date and duration of the CBA.

Whereas a CBA is a contract between the parties based on the Recognition Agreement, upon expiry of the Recognition Agreement, the parties remain bound by the existing terms and conditions.

The Claimant moved the court to address the Respondent's refusal to negotiate and agree to a new CBA after the last one lapsed on 31 December 2023, following its taking effect on 1 January 2021 and its 24-month term.

A new CBA should have been negotiated to protect the Claimant and its members within the context of the last CBA. The refusal to negotiate a new CBA has affected the terms and conditions of service; thus, the date of effect and duration should be from the first date of the last CBA, 1 January 2024.

This secures the employees covered under the last CBA dated 1 January 2021.

The duration of the CBA, commencing on 1 January 2024, is 24 months, as envisaged under the last CBA, which covered the period from 1 January 2021 to 31 December 2023.

Hence, parties are due for the next cycle of negotiations and CBA.

On the general wage increment, the Respondent conceded to a 2% increase, unlike the Claimant's proposed 5%. These increases will need to be incorporated into the next phase of

CBA negotiations, taking into account the CBA's effective date and duration, as addressed above.

On costs, the Claimant has claimed Ksh. 150,000 on costs, taking into account the time taken to conclude the negotiations. The Respondent submitted that the negotiations have been undertaken in good faith. However, the court takes into account that the parties have already lost a chance to negotiate two series of CBAs, particularly for the current phase, which ought to have commenced in January 2026.

To ensure continued good faith and industrial peace, there shall be no orders on costs.

Accordingly, the following orders are hereby issued:

- a) General wage increment to be negotiated in the next phase of CBA negotiations.**
- b) Effective date shall be the last date of the last CBA date, 1 January 2024, for a period of 24 months, thus ending on 31 December 2025.**
- c) For industrial peace, on orders or costs.**

Delivered in open court at Nairobi, this 29th day of April 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

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