



Kenya Chemical Workers Union v Cosmos Limited (Employment and Labour Relations Cause E181 of 2026) [2026] KEELRC 1084 (KLR) (27 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 1084 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E181 OF 2026**

BOM MANANI, J

APRIL 27, 2026

BETWEEN

KENYA CHEMICAL WORKERS UNION CLAIMANT

AND

COSMOS LIMITED RESPONDENT

RULING

Background

1. The Claimant is a trade union which is registered under the *Labour Relations Act*, 2007. It represents workers in the chemical and allied sectors in Republic of Kenya.
2. The Claimant has members from the Respondent's unionizable employees. The two have a subsisting Recognition Agreement.
3. The parties are in agreement that they entered into a Collective Bargaining Agreement (CBA) whose lifespan was for three years effective from 1st July 2022. The Claimant asserts that when the CBA expired, the parties entered into negotiations for a new CBA. It contends that they agreed on most terms in the proposed CBA except for the ones relating to redundancy and baggage allowance and retirement age.
4. The Claimant avers that the impasse on the disputed terms was escalated to the Ministry of Labour and Social Protection through its letter dated 15th September 2025. It avers that a Conciliator was accordingly appointed to resolve the impasse.
5. The Claimant contends that despite the intervention by the Ministry of Labour and Social Protection, the parties did not agree on the disputed clauses forcing the Conciliator to prepare her report on the matter. It avers that the Conciliator recommended that retirement age be adjusted from 55 years to



- 60 years and that severance pay for employees declared redundant be computed at the rate of 17 days for every year worked.
6. The Claimant avers that it agrees with the Conciliator's recommendation on retirement age but does not agree with the recommendation on computation of severance pay. Hence this suit.
 7. Contemporaneous with the Memorandum of Claim, the Claimant filed the application dated 2nd March 2026. The application seeks, inter alia, the following interim reliefs:-
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and disposal of the suit, the court issues a conservatory order to stay or restrain the Respondent and or its agents and or servants from enforcing any retirement notices it has issued to unionisable employees or from retiring any employee on the basis of the mandatory retirement age of 55 years.
 - d. That the court issues an order directing the Respondent to maintain the status quo ante with the consequence that any unionisable employees who have been issued with retirement notices requiring them to retire at 55 years be allowed to continue in service pending resolution of the case.
 - e. That the court issues an order directing the Respondent to produce all documents and retirement notices issued or likely to be issued to unionisable employees requiring them to retire at the age of 55 years.
 - f. That the court issues an order setting the timelines within which the Respondent is to file a response to the claim.
 - g. That the court gives directions on costs of the application.
 - h. That the court issues any other order it deems fit and just to grant in the circumstances.
 8. The application is supported by the grounds on the face thereof and the affidavit of Peter Ouko Onyango. The Claimant avers that although the expired CBA between the parties contains a clause which set retirement age at 55 years, the Respondent unilaterally offered to retire unionisable employees at that age of 60 years. As such, it (the Respondent) is bound to give meaning to the new retirement age.
 9. The Claimant relies on statements from Zamara Provident Fund which show that some of the Respondent's employees are set to retire at the age of 60 years. The Claimant contends that it is the Respondent who moved the employees to the Zamara Provident Fund which provides for the new retirement age of 60 years. As such, it (the Respondent) is bound to give meaning to the new retirement age.
 10. The Claimant contends that this is the basis for its insistence that the proposed CBA between the parties captures the new retirement age. It (the Claimant) contends that the Conciliator has as a matter of fact made a recommendation in that regard.
 11. The Claimant contends that despite the Respondent having unilaterally adjusted the retirement age for the affected employees to 60 years, it has gone ahead to issue some of them with notices requiring them to retire at the age of 55 years. As such, the Claimant contends that the court should intervene to stop the proposed retirement at the age of 55 years pending resolution of the dispute.



12. The Respondent has opposed the application through its replying affidavit dated 21st April 2026. It contests the Claimant's assertion that the retired CBA provided for retirement age. It contends that the clause which the Claimant has invoked to allege that the CBA had provision for retirement age deals with baggage allowance. The Respondent insists that mention of the age of 55 years in the clause was for purposes of quantifying the package to be paid to an employee who exits employment at that age and not to fix the retirement age.
13. The Respondent insists that retirement age is not one of the negotiable items in the CBA between the parties. It (the Respondent) insists that this is a matter which is left to individual employment contracts.
14. The Respondent avers that it has a Human Resource Policy which sets retirement age at 55 years and this fact has been brought to the attention of all employees. As such, it contends that it is not open to the Claimant to seek to change this position.

Analysis

15. The injunctive orders which the Claimant seeks are equitable in nature. As such, the court has discretion to decide whether to grant them depending on whether the facts of the case meet the threshold for grant of interim injunctive reliefs.
16. The conditions which an applicant for interim injunctive orders must satisfy before the orders can issue are provided for in the celebrated case of *Giella v. Cassman Brown & Co. Ltd* [1973] EA 358. These are:-
 - a. He must demonstrate the presence of a prima facie case with a probability of success.
 - b. He must demonstrate that he will suffer irreparable loss if the orders sought are not granted.
 - c. If the court is in doubt, it should decide the application on a balance of convenience.
17. The Claimant's case is that the Respondent unilaterally changed the retirement age for unionisable employees from 55 years to 60 years when the latter moved the retirement benefits scheme to Zamara Provident Fund which provides for employees to retire at the age of 60 years. The Claimant contends that this development raised legitimate expectations in the employees that their retirement age will be 60 years. As such, the Claimant contends that it is improper for the Respondent to turn around and purport to retire the employees at 55 years.
18. The Respondent has contested the Claimant's assertion. It insists that retirement age for its employees is fixed at 55 years in its Human Resource Manual. The Respondent avers that this fact has been brought to the attention of employees and that it is not open to negotiation through collective bargaining.
19. The Claimant's case is built around three members' statements issued by Zamara which show that the three employees' expected retirement age is 60 years. However, the three employees are not among the employees who have been issued with retirement notices.
20. The Claimant wants the court to use the statements from Zamara with respect to the three employees to make a generalized finding that the Respondent altered the retirement age for all unionisable employees from 55 years to 60 years. That will be improper since absent evidence to the contrary, employment contracts are individual based.
21. It is also possible that the three successfully negotiated their retirement age to 60 years and hence what is contained in their statements by Zamara. This is a matter which can only be resolved after evaluation



of evidence adduced during full trial. As such, the court cannot rely on the three statements to declare that the Claimant has established a prima facie case to warrant issuance of injunctive orders to affect the retirement age for all unionisable employees.

22. The court also notes that the dispute between the parties centers on whether unionisable employees should retire at the age of 55 years or 60 years. In effect, the contest relates to whether the employees should be allowed to work for a further period of five years before they exit employment.
23. The remuneration for the affected employees for the five years is certainly quantifiable and capable of compensation in damages. This disentitles the Claimant to the interim relief of temporary injunction.
24. Importantly, the law provides for the remedies of reinstatement and re-engagement should an employee be able to demonstrate that his contract of service was improperly terminated. In appropriate cases, the court may grant such relief. In the face of this reality, it cannot be contended that if the Respondent gives effect to the impugned retirement notices, the affected employees will suffer irreparable damage.
25. Taking the foresaid into account, the court finds that this is not an appropriate case for grant of the interim injunctive and conservatory orders sought. As such, the request for the aforesaid interim reliefs is declined.
26. The Claimant also prays for an order to compel the Respondent to produce all the retirement notices it has issued or proposes to issue to unionizable employees. This request is in the nature of an order for discovery.
27. Discovery is only sanctioned where it is demonstrated that the documents which are sought are in the exclusive possession and control of the opponent and the applicant has no access to them. In this case, the impugned retirement notices were issued to the Claimant's members. As such, they are deemed to be in their possession.
28. That being the case, the documents cannot be said to be in the exclusive possession and control of the Respondent to warrant issuance of an order for discovery. As such, the request in this respect is declined.
29. The Claimant further prays that the court directs the Respondent to file its response to the Memorandum of Claim within a specified time frame. Yet, rule 29 of the Employment and Labour Relations Court (Procedure) Rules, 2024 has already fixed the timelines for filing a defense to twenty eight days from the date of service of the Memorandum of Claim. This being the case and absent justification for reducing the time which is provided under the aforesaid rule, the court is disinclined to adjust the timelines for filing a defense to the cause.

Determination

30. The upshot is that the application dated 2nd March 2026 is disallowed.
31. Costs of the application to abide the results of the case.

DATED, SIGNED AND DELIVERED ON THE 27TH DAY OF APRIL, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant



.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

