



Kenya Union of Commercial, Food and Allied Workers v London Distillers (K) Limited (Employment and Labour Relations Cause E6548 of 2020) [2024] KEELRC 170 (KLR) (8 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 170 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E6548 OF 2020**

MN NDUMA, J

FEBRUARY 8, 2024

BETWEEN

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS CLAIMANT

AND

LONDON DISTILLERS (K) LIMITED RESPONDENT

RULING

1. The claimant Union filed suit against the respondent vide a memorandum of claim dated 26/08/2020. The issue in dispute before the court is stated to be “Failure to pay terminal dues to Ms. Lucy Wangari Macharia” a former employee of the claimant whose employment was terminated on 1/2/2019.
2. The reliefs sought in the suit are:-
 1. That the respondent’s action to issue immediate transfers to the grievant were unlawful and did not meet the procedural fairness.
 2. That the termination of service by the grievant amounted to constructive dismissal.
 3. That the court order the respondent to pay the grievant the following dues in accordance with clause 6 of parties Collective Bargaining Agreement.
 - i. Five (5) months’ pay in lieu of notice
 - ii. Service pay 60 days x 36791 x 16 years = Kshs. 1,358,436.00
4. Costs of the suit be borne by the respondent.



5. Any other relief/order that the Honourable Court may deem fit.
3. The respondent filed a reply to the Memorandum of Claim dated 17/8/2021 in which it prays that the suit be dismissed for lack of merit since the grievant voluntarily resigned from employment.
4. The respondent then filed a Notice of Motion application dated 28/8/2023 in which it prays:
 1. That this Honourable Court be pleased to stay the proceedings herein pending the hearing and determination of ELRC CBA NO. 207 of 2017 London Distillers Limited versus Kenya Union of Commercial Food and Allied Workers on the basis that the claimant in E6548 of 2020 is founded on non-payment of terminal dues based purely on the provisions of the Collective Bargaining Agreement (CBA) dated 14/7/2017 and in particular clause 6 and 22 of the CBA. In other words the suit seeks to effect clause 6 and 22 of the CBA.
 5. That the legality of the CBA including clause 6 and 22 is in dispute in ELRC CBA No. 267 of 2017. That therefore this suit be stayed pending the determination of that other suit.
 6. The application is opposed vide a replying affidavit of Boniface M. Kavuvi, the General Secretary of the claimant/respondent in which he states that the dispute referred to by the applicant does not in any way pre-empt determination of the current suit. That, the suit will be determined purely on the contract of service between the grievant and the company. That if the 2017 CBA is in doubt or is eventually nullified, then the terms of the grievant will be determined in terms of the CBA dated 1st May 2013. That there cannot be any void concerning terms and conditions of service of employees including the grievant.
 7. That the application is mis-conceived and is an abuse of court process and it be dismissed.
 8. The petitioner filed written submissions which the court has considered together with the deposition filed by the parties.
 9. The court is not persuaded that there exists any justification to grant the orders sought by the applicant.
 10. The claim is not dependent at all on validity or otherwise of the CBA in dispute in ELRC CBA No. 267 of 2017.
 11. Indeed this application is frivolous and an abuse of the court process that has resulted in delayed prosecution of the present suit brought by the claimant's union on behalf of the grievant – Lucy Wangari.

Accordingly, the application is dismissed with costs.

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2024

Appearances

Mr. Chandanyanya for Respondent/Applicant

Mr. Nyumbe for Claimant/Respondent

Ekale: Court Assistant

