



Kenya Union of Commercial Food and Allied Workers v Kenya Seed Company; Salaries and Remuneration Commission (Interested Party) (Cause E007 of 2023) [2024] KEELRC 1007 (KLR) (12 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 1007 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E007 OF 2023
MA ONYANGO, J
APRIL 12, 2024**

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

KENYA SEED COMPANY RESPONDENT

AND

SALARIES AND REMUNERATION COMMISSION INTERESTED PARTY

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* to represent the employees in the commercial sector as more specifically set out in the membership clause of its constitution.
2. The Respondent is a State Corporation dealing with production, marketing and distribution of seeds.
3. The Interested Party is established under Article 230 of the *Constitution* of Kenya and mandated to set and regularly review the remuneration of all state officers and to advise on the remuneration and benefits of all other Public Officers.
4. The Claimant has a recognition agreement with the Respondent with whom it has previously negotiated collective bargaining agreements, with the last one covering the period 1st December, 2016 to 30th November 2020.
5. It is the Claimant’s case that the said Collective Bargaining Agreement was expected to expire on 30th November 2020. That Clause 25 of the said agreement provides for amendment/review of the terms thereof.



6. The Claimant further avers that it sent its Collective Bargaining Agreement proposals to the Respondent in early August 2020, and initiated review of the outgoing agreement in good time. That the parties thereto agreed on some clauses while the clauses which were not agreed upon were left in abeyance.
7. It is the Claimant's case that the Respondent has been unwilling to negotiate and conclude the current Collective Bargaining Agreement to the detriment of the Claimant's members.
8. According to the Claimant, the Respondent is circumventing Collective Bargaining negotiations by bringing in the Interested Party which lacks mandate on the remuneration of the Respondent's employees, since the employees' remuneration and benefits are not payable from the Consolidated Fund or directly from money provided by parliament or public funds.
9. The Claimant maintains that the Respondent being a commercial state cooperation generating its own funds, falls outside the purview of the Salaries and Remuneration Commission.
10. The Claimant argues that it is unreasonable to delay the conclusion of the collective bargaining agreement as under the Recognition Agreement, the Collective Bargaining Agreement, the Wages Guidelines and the law, the parties have a duty to regularly review the terms and conditions of service for the Respondent's unionisable employees as the only means to cushion unionisable employees from the effects of inflation and ravages of the ever rising cost of living.
11. The Claimant states that the Respondent is obliged under the Constitution to observe, respect, promote and uphold the rights of employees to fair labour practices, fair remuneration and reasonable working conditions which should be reviewed from time to time.
12. In its Statement of Claim, the Claimant seeks the following remedies against the Respondent:
 - i. Adopt and uphold the clauses already negotiated and agreed upon between the parties.
 - ii. Adopt and uphold the Claimant's proposals as particularized in the claim herein and declare the proposals as fair and reasonable.
 - iii. Declare that the Respondent does not fall under the mandate of the Salaries and Remuneration Commission and that their report and advice to the Respondent is not required and is not binding.
 - iv. Upon granting of order (1) and (2) above, the Court orders the Respondent to sign the 2020-2024 Collective Bargaining Agreement within 30 days from the date of judgment.
 - v. This court grants any other relief as it may deem fit
 - vi. Costs of the suit be borne by the Respondent.
13. The Statement of Claim was filed together with a Notice of Motion in which the Claimant sought an order that the Central Planning and Monitoring Unit be ordered to analyze the dispute and provide an economic report within 30 days upon receipt of the response.
14. My brother Hon. Justice J.N Abuodha granted the prayer and in compliance with the above order, the Central Planning and Monitoring Department filed its report on 23rd May 2023.
15. On 27th September, 2023 the Respondent informed the court that it had filed its defence to the Claim on the said date but had not yet served. I have perused the record and did not find a response to the Claim by the Respondent.



16. The Interested Party filed its response to the Statement of Claim on 4th September 2023. In its response, the Interested Party denied that it lacks mandate to advise the Respondent on remuneration of its employees as alleged or at all and stated that the Respondent being a State Corporation as per the provisions of section 2(b)(v) of the *State Corporation Act*, is subject to its advice on the remuneration and benefits pursuant to the provisions of Articles 230(4)(b) and 259(11) of the *Constitution* and section 11 of the *Salaries and Remuneration Commission Act*.
17. The Interested Party denied being aware of any negotiations and averred that if any negotiations ever took place in respect to remuneration and benefits of the Respondent's unionisable employees, its advice ought to have been sought as per the provisions of Article 230(4)(b).
18. It is the Interested Party's case that it has the mandate to advise the Respondent on the remuneration and benefits of its employees and that pursuant to that mandate, it has issued advice to the Respondent on the parameters for negotiation with the Claimant and that it is incumbent upon the Claimant and the Respondent to negotiate the financial items of the CBA within the parameters advised by the Interested Party in its letter dated 14th August 2013.
19. The suit was disposed of by way of written submissions. The Claimant filed two sets of submissions. The first submissions were filed on 29th September 2023 and the second, titled Claimant's Supplementary Submissions were filed on 30th January 2024. From a perusal of the record, it appears the Respondent and the Interested Party did not file any submissions.

The Claimant's Submissions

20. In its submission, the Claimant states that clauses 1, 4, 6, 7, 11, 12, 14, 15, 17, 18, 19 and 21 of the CBA for the period 1st December, 2016 to 30th November 2020 were retained at the meeting held on 8th and 9th December 2020 while the clauses 2, 4, 8, 9, 10, 13, 16, 20, 22, 23, 24, 26 and 27 were left in abeyance.
21. It is further submitted that the Economic report dated 17th February 2023 and filed by the Central Planning and Monitoring Unit indicates that the Respondent has a sound financial position and capable of meeting the proposed changes.
22. According to the Claimant, the counter offers proposed by the Respondent on each of the outstanding clauses do not reflect a fair compensation to cushion employees from the effects of the rise in cost of living taking into account their contribution and efforts in profit generation.
23. The Claimant submits that the Respondent generates its own funds which is used to pay for its activities including remuneration of its staff and that with regard to definition of a public officer under Article 260 of the *Constitution*, the Respondent's unionisable employees do not hold office in the National government and further, they are not employed by the Public Service Commission.
24. It is thus submitted that the Respondent's employees do have a right to negotiate and review their terms of service directly with their employer and that the Interested Party cannot be allowed to emasculate this right of the Respondent and impose unnecessary impediments.
25. It is the Claimant's further submission that this court and the Constitutional court have already pronounced themselves that the role of the Salaries & Remuneration Commission is limited to advising the National Government, County Governments and Public Offices where remuneration is drawn directly from the Consolidated Fund or from money provided by parliament.



26. The Claimant submits that in all past negotiations, the Interested Party has never been involved in CBA negotiations and the Interested Party is just interfering by attempting to assume a role outside of its constitutional and lawful mandate and functions.
27. The Claimant therefore seeks that the court should consider improving the outstanding clauses to form terms of service for the period 2020/2024 and review the outstanding Collective Bargaining Agreement as proposed by the Claimant.
28. In the Supplementary submission filed by the Claimant on 30th January 2024, it was brought to the attention of the court that parties had met and resolved all the outstanding clauses and minutes of the joint meetings signed on 23rd January 2024 were attached thereto.
29. The Court was therefore called to determine only the issue of the effective date and duration of agreement.
30. According to the Claimant, the outgoing Collective Bargaining Agreement came into force on 1st December 2016 for a four-year duration coming to an end on 30th November 2020 and the revised Collective Bargaining Agreement would then naturally come into force on 1st December 2020 for a duration of four (4) years to lapse on 30th November 2024.
31. The Claimant submits that the Respondent's argument is that they have been advised by the Interested Party to change the effective and duration to 1st May 2023 and that the rationale behind this proposal has not been given.
32. It submits that the proposed effective date of 1st May 2023 would mean that the employees of the Respondent will have 29 months without compensation. That the Respondent and the Interested Party have not given a proposal on how they intend to compensate employees for the two and half years of the regular review cycle before attempting to force and dictate a change of the effective date and duration.
33. The Claimant urged the court to adopt the minutes of the joint meetings held on 8th and 9th December 2020 where the Clause on effective date and duration was resolved.
34. The Claimant sought for an order to issue directing the Respondent to draft the Collective Bargaining Agreement within the terms of the minutes of the meetings held on 8th and 9th December 2020 and on the basis of the minutes of the meetings held between the 22nd and 25th January 2024 and that the Effective date do remain as 1st December 2020 for four years as already agreed.

Determination

35. I have perused the minutes annexed to the Claimant's supplementary submissions. Those minutes relate to the CBA negotiations between the Claimant and the Respondent held between 22nd and 25th January 2024 at Boma Inn Hotel in Eldoret. As submitted by the Claimant, the parties agreed on all outstanding clauses of the Collective Bargaining Agreement except the effective date. The only issue that falls for my determination is therefore the effective date and the duration of the revised Collective Bargaining Agreement.
36. From the said minutes, the Claimant's position was that the effective date is 1st December 2020 while the Respondent on the other hand maintained that the effective date ought to be 1st March 2023.
37. In determining the issue of effective date of a Collective Bargaining Agreement, the court is called upon to analyze the duration of the expired Collective Bargaining Agreement. In this case, the outgoing



Collective Bargaining Agreement came into force on 1st December 2016 for a duration of four (4) years coming to an end on 30th November 2020. Naturally, it was expected that the revised Collective Bargaining Agreement would then come into force on 1st December 2020 for a duration of four (4) years to lapse on 30th November 2024.

38. The Claimant sent proposals for review of the CBA to the Respondent by letter dated 19th August 2020 which was sufficient time for the parties to negotiate the CBA before expiry of the outgoing CBA. It was the Respondent who caused the delay in the revision of the same prompting the filing of this dispute.
39. Neither the Respondent nor the Interested Party gave the court any basis to change the effective date of the CBA. Clause 25 of the outgoing CBA provides for the effective date as follows:
- This agreement shall come into force with effect from 1st December, 2016 and shall remain in force for a period of four years from that date. thereafter the agreement shall continue in force, until such time as either party by giving of three months' notice in writing shall signify their wish to terminate or amend this agreement.
40. The Claimant has submitted that the Interested party has no mandate to interfere in the negotiations of the CBA between the Claimant and Respondent.
41. The Mandate of the Interested Party according to Article 230 of the Constitution is:
The powers and functions of the Salaries and Remuneration Commission shall be to—
- a. set and regularly review the remuneration and benefits of all State officers; and
 - b. advise the national and county governments on the remuneration and benefits of all other public officers.
42. From a reading of Article 230 I would agree with the Claimant from a plain reading of Article 230. It has however been accepted as a matter of policy that the Interested Party addresses all Government Institution on remuneration and benefits of employees. The Respondent has been doing so in the past as reflected in documents submitted by the Interested Party.
43. In such advice the Interested Party must have proper justification. In the instant case no justification has been given on change of effective date and duration of CBA.
44. The effective date of the revised Collective Bargaining Agreement shall therefore be retained as 1st March 2023.
45. The CBA terms are therefore as follows:
- i. Clauses Retained as per outgoing CBA Preamble
 - Clause 1: Probation period – Retain
 - Clause 4: Overtime Payments -Retain
 - Clause 6: Sick Leave
 - Clause 7: Injury
 - Clause 11: Compassionate leave – Retain
 - Clause 12: Religious Holidays – Retain
 - Clause 14: Acting allowance – Retain



Clause 15: Promotions to another grade- Retain

Clause 17: Warning Procedures – Retain

Clause 18: Termination of service – Retain

Clause 19: Certificate of Service – Retain

Clause 21: Medical -Retain

The Court adopts the agreement of the parties at the meeting held by the parties at Boma Inn, Eldoret between 22nd and 25th January, 2025 for the Clauses stated in the minutes of the meeting as filed in Court as Appendix “A” to the Claimant’s Supplementary Submissions dated 29th January, 2024 and filed in Court on 30th January, 2024.

ii. The effective date shall be 1st December 2020 to 30th November 2024 a period of 4 years;

46. Consequently, I enter Judgment in favour of the Claimant in the following terms:

i. The Collective Bargaining Agreement be signed and presented to court for registration within thirty (30) days from the date of Judgment.

ii. The Respondent to pay Claimant’ costs of this suit which I assess at Kshs. 100,000 as the Claimant is a trade union and is not eligible for taxation of costs as it was not represented by an advocate. It is my view that the said costs are reasonable and fair to cover filing, service and attendance fees as well as all other incidental expenses.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 12TH DAY OF APRIL 2024.

MAUREEN ONYANGO

JUDGE

