



**Kenya Chemical Workers Union v Mac's Pharmaceuticals Limited (Cause E912 of 2023) [2024] KEELRC 1221 (KLR) (3 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1221 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E912 OF 2023  
NZIOKI WA MAKAU, J  
APRIL 3, 2024**

**BETWEEN**

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

**AND**

**MAC'S PHARMACEUTICALS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed this claim against the Respondent for relief against the Respondent for breach of various provisions of the Labour Relations Act, the Employment Act and the Constitution of Kenya. It was averred that the Claimant has a recognition agreement with the Respondent and has negotiated several CBAs on behalf of employees who are in the service of the Respondent.
2. The Claimant averred that despite all efforts to engage on the issue of Non- Implementation of the aforementioned Collective Bargaining Agreements the Respondent has and continues to violate the CBAs hence our efforts have proven futile. That failure to implement the negotiated and registered CBAs is an infringement on the rights of the Claimant's members under Article 41 of the Constitution of Kenya 2010. It was submitted that the parties to the CBAs are bound to the negotiated and registered CBAs by dint of section 59(2) of the Labour Relations Act 2007. The Claimant averred that the Respondent has no legal basis to refuse to implement the registered CBAs and should be compelled to pay the affected employees all their benefits and accrued arrears from the time the CBAs where to take effect.
3. The Claimant averred that after so many correspondences with the Respondent in which they have declined, failed, ignored, refused and or been adamant to implement the three (3) CBAs it had on 6<sup>th</sup> December 2022 reported this matter to the Cabinet Secretary Ministry of Labour and Social Protection in compliance with section 62(1) of the Labour Relations Act 2007. That on 19<sup>th</sup> April 2023 a conciliator Mr. Peter Bacha was appointed and that he invited parties for conciliation meeting on 10<sup>th</sup> May 2023 vide letter dated 3<sup>rd</sup> May 2023 and further on 25<sup>th</sup> July 2023. The Claimant averred that



- the Conciliator after hearing the parties issued his report on 30<sup>th</sup> August 2023 which it accepted on the same even date and that despite all conciliation meetings and several attempts to bring parties to an amicable conclusion in respect to this dispute which did not yield any success.
4. When the matter came up in Court for hearing, Mr. Gwako for the Union stated that the issue in dispute is refusal to implement CBA. He stated that the Claimant had done all that can be done to discuss and that the matter had gone up to conciliation where Mr. Bacha was appointed by the Minister. He asserted the parties were invited to meetings and the Respondent refused to attend all the meetings and that the Conciliator issued report on 30<sup>th</sup> August 2023. The representative indicated that the Claimant accepted it and wrote asking the Respondent to accept the request and that despite several attempts to have this accepted the Respondent did not do anything.
  5. He stated that in terms of section 59 of the Labour Relations Act 2007, the Respondent had failed, declined and/or refused to implement the 3 CBAs. He asserted that the refusal to implement the CBAs is illegal and violates Article 41 of the Constitution of Kenya 2010. He asserted that the breach of the Constitution and legal provisions amounts to unfair labour practices and that the Respondent had contravened section 5 and 26 of the Employment Act as well as Article 27 of the Constitution. It was asserted this amounts to an offence.
  6. The Claimant thus sought for judgement against the Respondent as follows:-
    - a. Compel the Respondent to comply with Rca 284 of 2022 and Rca 285 of 2022.
    - b. Accrued benefits accepted under CBAs be paid to employees concerned.
    - c. Interest at 14% per annum per CBA effective dates till fully paid.
    - d. Declaration the Respondent is in breach of Constitution Article 41 and Labour Relations Act 2007.
    - e. Damages for the breach of constitutional rights.
    - f. Costs and interest at court rates.
    - g. Any other orders it deems fair, right and just.
  7. The evidence adduced before the Court clearly demonstrates that the Respondent has declined to implement CBAs duly registered. The CBAs were before this Court as provided for under section 60 of the Labour Relations Act, 2007. The Claimant asserts refusal to implement the CBAs is a breach of the Employment Act, Labour Relations Act and the Constitution. The Court agrees. Section 59(5) of the Labour Relations Act states that a collective agreement becomes enforceable and shall be implemented upon registration by the court and shall be effective from the date agreed by the parties. The CBAs became effective upon registration by the Court in terms of sections 59(5) and 60 of the Act. This places an obligation on the Respondent to implement the CBAs and as failure to implement them is unconscionable, there will be sanctions.
  8. Having failed to implement the CBAs, the Court finds in favour of the Claimant in this suit and grants the following prayers:-
    - a. Declaration be and is hereby issued that the Respondent is in breach of Article 27 and 41 of the Constitution of Kenya and sections 59(5) and 60 of the Labour Relations Act, 2007.
    - b. Respondent to comply with Rca 284 of 2022 and Rca 285 of 2022 forthwith.



- c. Accrued benefits accepted under CBAs be paid to employees concerned within 30 days of this decision.
- d. Interest on any accrued amounts that remain unpaid from 2<sup>nd</sup> May 2024 at 14% per annum till payment in full.
- e. Payment of Kshs. 500,000/- to the Claimant Union for the breach of the rights of the Claimant's members.
- f. Interest at court rates on the sum in (e) above from the date of judgment till payment in full.
- g. Costs of the suit.

It is so ordered.

Dated and delivered at Nairobi this 3<sup>rd</sup> day of April 2024

**NZIOKI WA MAKAU**

**JUDGE**

