



**Kenya Chemical & Allied Workers Union v Kenya Flexogravure Limited
(Cause E001 of 2022) [2024] KEELRC 1603 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1603 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E001 OF 2022
DN NDERITU, J
JUNE 26, 2024**

**BETWEEN
KENYA CHEMICAL & ALLIED WORKERS UNION CLAIMANT
AND
KENYA FLEXOGRAVURE LIMITED RESPONDENT**

JUDGMENT

I. Introduction

1. The claimant, a trade union, initiated this claim for an on behalf of five grievants named in the memorandum of claim dated on 28th January, 2022 but filed in court on 2nd February, 2022 wherein the claimant is seeking the following reliefs –
 1. That, this Honourable Court be pleased to give an Order that the Grievants be paid their Redundancy/Service benefits as covered by the CBA signed between the parties immediately and be paid once as they have already wanted for a long time now.
 2. That, this Honourable Court uphold and improve on Conciliator’s report and Order immediate payments.
 3. That, this Honourable Court Award interest to such workers who are still suffering while the Respondent is using their benefits to make profit for themselves.
 4. That, this Honourable Court Award maximum compensation to such Grievants for the suffering they have endured since they were declared redundant by the respondent as not salary was due to them from August, 2021 to date.
 5. That, this Honourable Court Award the Respondent to meet the cost of this suit.



2. The respondent entered appearance on 29th March, 2022 through Namasaka & Kariuki Advocates but failed to file a response to the claim within the time allowed
3. A memorandum of response filed in court on 11th May, 2023 was filed out of time and without the leave of the court and as such the same was struck out and expunged from the court record on 16th May, 2023.
4. By consent of the representatives for the parties, Mr. Mutongoi for the claimant and Mr. Ayisi for the respondent, it was agreed that the cause be heard and disposed of by way of written submissions. Mr. Mutongoi filed his submissions on 5th May, 2023 while Mr. Ayisi filed on 11th May, 2023.

II. The Claimant' Case

5. The claimant's case is based on the filed memorandum of claim, the bundle of documents attached thereto, and the written submissions. It is pleaded that on 25th August, 2020 the respondent wrote to the claimant communicating its intention to declare seven of its employees redundant. This was during the Covid-19 pandemic whereby the respondent had sent 19 of its employees on compulsory leave due to harsh operating conditions resulting from the pandemic and as such the respondent held that it was not economically viable for it to recall all the 19 employees back to work once it resumed operations in January, 2021.
6. The claimant, on behalf of the affected employees, objected to the said redundancy but it was ultimately mutually agreed that only five employees, now the grievants herein, were to be declared redundant. It was agreed that the grievants were to be paid their terminal dues by 30th September, 2020 and the respondent committed itself to this settlement in a letter dated 4th September, 2020. The affected employees, now the grievants herein, are –

Employee Number	Employee Name	Designation
021	Jonathan Wandera Ongero	Packaging Helper
049	Jackline Munyasia Mujera	Packaging Helper
059	Caroline Vihenda Asunga	Packaging Helper
077	Sharon Jebet Cherutich	Packaging Helper
083	Rhodah Naliaka Olanga	Packaging Helper

7. It is pleaded that unfortunately the respondent neither tabulated the dues payable to the grievants nor did they pay or settle the same.
8. The respondent had a recognition agreement with the claimant and there was a subsisting collective bargaining agreement (CBA) executed on 17th July, 2013 which was to run for two years from 1st May, 2013 and thereafter run until it was mutually amended or replaced with another one.
9. Following the impasse, the claimant referred the trade dispute to the Cabinet Secretary, the Ministry of Labour and Social Protection, vide a letter dated 19th March, 2021, which was copied to the respondent. The ministry acknowledged receipt of the above letter vide a letter of the Chief Industrial Officer dated 15th April, 2021. In a letter dated 22nd April, 2021 the duly appointed conciliator invited



the parties to submit written proposals on a settlement to be considered in a joint meeting that was to take place on 5th May, 2021.

10. The claimant submitted its proposals vide a letter dated 18th June, 2021. Apparently, the respondent also filed its proposal but the same has not been filed in court. Nonetheless, the conciliator prepared a report dated 31st August, 2021 recommending that “Let the parties abide Both parties are urged to abide by the CBA and the Employment Act, 2007 (Section 40) on redundancy while tabulating the terminal dues.” The conciliator concluded that “Both parties are urged to abide by the recommendations made by the conciliator as a basis of settlement of this dispute.”
11. It is the claimant’s case that the respondent failed, refused, and or neglected to engage and settle the dispute as recommended by the conciliator, reasons wherefor it had no alternative other than to file this cause in court seeking for the reliefs reproduced in the introductory part of this judgment.
12. As noted above the respondent did not defend the claim as it did not file a response or reply thereto as provided for in law.

III. Written Submissions

13. On the one hand, Mr. Mutongoi for the claimant identified two issues of determination - Whether the redundancy of the grievants was valid; and, Whether the grievants are entitled to the reliefs sought.
14. On redundancy, it is submitted that the respondent did not comply with Section 40 of the Employment Act (the Act) when it declared the five grievants redundant.
15. On the reliefs, Sections 28, 40, & 49 of the Act are cited as the basis and foundation for the reliefs sought. The decisions in Thomas De La Rue V David Omutelema (2013) eKLR and Kenya Airways V Aviation & Allied Workers Union of Kenya (2014) eKLR are cited as leading authorities of how redundancy should be carried out and effected and it is submitted that the respondent did not comply with the applicable procedure and the law.
16. On the foregoing basis, the court is urged to relief the grievants as prayed in the memorandum of claim as follows –

Late Mr. Habel Maube Kshs.

- i. One month notice 27,963
 - ii. Days worked 30,114
 - iii. Pro-rata leave
 - iv. Annual paid leave 27,963
 - v. Severance payment for
33 years of service 1,064,745
 - vi. Leave Travelling Allowance 2,000
 - vii. Baggage Allowance 10,000
 - viii. Funeral 50,000
- Grand Total 1,212,785
1. Jonathan Wandera Kshs.



- i. Notice of one month 17,549.36
 - ii. Days worked May, June, & July 2020 52,648.08
 - iii. Pro-rata leave of 4 months 5,399.80
 - iv. Annual paid leave of one month 17,549.36
 - v. Leave Travelling Allowance 2,000.00
 - vi. Severance payment of 22 years 445,483.75
 - vii. Baggage Allowance 10,000.00
 - viii. Compensation for delaying payment 210,592.30
 - Grand Total 761,222.85
2. Sharon Jebet Cherutich Kshs.
- i. Notice of one month 14,040
 - ii. Days worked May, June, & July 2020 42,120
 - iii. Pro-rata leave of 9 months 9,720
 - iv. Annual paid leave of one month 14,040
 - v. Severance payment of 14 years' service 226,800
 - vi. Leave Travelling Allowance 2,000
 - vii. Baggage Allowance 10,000
 - viii. Maximum Compensation 168,480
 - Grand Total 487,200
3. Rhodah Naliaka Olanga Kshs.
- i. One month notice 14,206
 - ii. Days worked May, June and July 2020 42,618
 - iii. Pro-rata leave 5,400
 - iv. Annual paid leave of on the month 14,040
 - v. Leave Travelling Allowance 2,000
 - vi. Severance payment for 7 years' service 113,400
 - vii. Baggage Allowance 10,000
 - viii. Compensation for delaying payment 170,472
 - Grand Total 369,480
4. Caroline Vihenda Asunga Kshs.
- i. One month notice 14,040
 - ii) Days worked May, June, July 2020 42,120



- iii) Annual paid leave of one month 14,040
 - iv) Leave Travelling Allowance 2,000
 - v) Severance payment for 13 years 210,600
 - vi) Baggage Allowance 10,000
 - vii) Compensation for delaying payment 168,480
- Grand Total 461,280

5. Jacklyne Munyasia Mujera Kshs.

- i) One month notice 14,040
 - ii) Days worked May, June, July 2020 42,120
 - iii) Pro-rata leave 2,160
 - iv) Annual paid leave of one month 14,040
 - v) Leave Travelling allowance 2,000
 - vi) Severance payment for 13 years 210,600
 - vii) Baggage Allowance 10,000
 - viii) Compensation delaying payment 168,480
- Grand Total 463,440

17. On the other hand, counsel for the respondent, without any basis or evidence on record, alleged from the bar that the respondent has already settled the claim with the grievants and that a Mr. Hasmukh, now deceased and a former director of the respondent, had no authority to execute the CBA between the claimant and the respondent. Of course, the court cannot and shall not accept such adduction of evidence from the bar and in absence of a duly filed response or reply to the claim the counsel for the respondent may only legally submit on issues of law. No witness statements or affidavits or indeed any documents were filed on record by or for the respondent.
18. It is submitted that the CBA between the parties was valid for only two years and that the same expired on 31st April, 2015. Counsel cited Mukiria Farmers Co-operative Society Ltd V Jacob Rukaria & 5 Others (2017) eKLR in asserting that a CBA remains in force only for period mutually agreed by and between the parties.
19. It is submitted that in declaring the five grievants redundant the respondent complied with the law and more so Section 40 of the Act.
20. On compensation and settlement of the dues to the grievants, it is submitted that the same is fully settled, including the dues paid to Joan Maube the widow of the late Mr. Habel Maube who was an employee of the respondent for 33yrs who died in or around May, 2020.
21. For the foregoing reasons the respondent pleads with the court to dismiss this cause with costs.

IV. Issues for Determination

22. The court has carefully and dutifully read and analyzed the pleadings filed and the written submissions filed. The following issues commend themselves to this court for determination –



- a. Is Joan Maube, the alleged widow of the late Habel Maube, entitled to be compensated for and on behalf of her alleged deceased husband as pleaded?
- b. Was the redundancy declaration upon the grievants by the respondent carried out in accordance with the law?
- c. Are the grievants entitled to the reliefs sought?
- d. Who meets the costs of the cause?

V. Analysis & Determination

23. I have struggled to comprehend how the issue and claim for and on behalf of the deceased employee fits into this cause. The evidence on record is not that the deceased was declared redundant alongside the five grievants in this cause. Rather, the deceased died sometimes in May, 2020. The very nature of that claim distinguishes it from the subject matter of the claim by the other grievants. Nonetheless, the court shall deal with the matter as hereunder.
24. The deceased was neither declared redundant nor dismissed or terminated. The evidence on record as per the witness statement of his alleged widow is that he died while an employee of the respondent having served them for over 33yrs. Evidently, the claim by the purported widow of the deceased is not in consonance with the claim by the grievants herein and should not be in this cause but in a separate and distinct cause.
25. Other than her witness statement, not taken on oath, the alleged widow presented no evidence whatsoever that she is indeed the widow of the deceased. There is no evidence of a marriage between her and the deceased. Most importantly, and the claimant ought to know this, the alleged widow has not presented to this court letters of administration from any court authorizing her to represent the deceased or to administer his estate.
26. For all the foregoing reasons the claim by Joan Maube is hereby dismissed with no order as to costs.
27. On the second issue, redundancy, the court's view is that the five grievants were declared redundant by consent and mutual agreement between the claimant and the respondent. Having so agreed, the respondent had no business issuing any notices as the parties deemed that Section 40 of the Act had been complied with only subject to payment of the terminal benefits. The parties by consent waived any procedural steps in the redundancy process and both are estopped from claiming otherwise. Unfortunately, the respondent did not settle the terminal dues hence the filing of this cause in court.
28. The next issue for determination is what terminal dues are payable to the grievants and whether the reliefs sought in this cause are in consonance with those lawfully payable terminal dues. In other words – what terminal dues were due and payable upon the said mutually agreed redundancy?
29. The relevant law in answering the above question is Section 40 (d), (e), (f), & (g) of the Act which provides as follows –
 - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
 - (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;



- (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
- (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.
30. Contrary to the submissions by counsel for the respondent, there was a valid CBA between the claimant and the respondent. I find and hold so because in clause 29 of the CBA as executed by the parties it was agreed and provided as follows –
29. Effective Date and Duration of Agreement
- The agreement shall be effective from 1st May 2013 and run for two years and thereafter, until it is amended by mutual agreement between the Company and the Union provided that the party desiring to amend the agreement shall give one month notice of the intention and shall set out in details of the amendment or alteration which such party desires.
31. The above clause in the CBA resonates well with the reasoning by the Court of Appeal in *Mukira Farmers Co-operative Society Ltd V Jacob Rukaria & Others* (supra) to the effect that a CBA once executed and registered becomes part of the contract of service for the applicable period and the parties are bound to the terms thereof. However, the above cited clause in the CBA clearly indicates that the duration thereof subsisted beyond the initial two years unless and until the same is amended as provided for therein, or, of course, repealed and or replaced with a new one. In other words, between that CBA and a new one or amendment thereof there was no vacuum and that was the intention of the parties.
32. The Court of Appeal held, and this court fully appreciates, agrees, and associates with that position, that where there is no provision for extension of the application of the CBA its application automatically ceases upon expiry of the duration agreed. However, in this cause the parties mutually agreed for the extension in application of the CBA as stated above. It is therefore the finding and holding of this court that the CBA is applicable in evaluating the terminal benefits due and payable to the grievants and the court shall proceed on that basis.
33. From the bar, counsel for the respondent urged that the terminal dues that may have been due and payable to the grievants have already been paid and settled. However, no evidence of such payments or settlement was availed in court and hence that submission from the bar is inadmissible and the same is hereby disregarded and dismissed.
34. But then, what terminal dues are payable to the grievants in the circumstances?
35. Upfront, it is important to keep in mind that the court has already found and held that the redundancy was consented to by both parties and the only issue for this court to determine is what terminal dues were payable to them upon redundancy as that is the matter that ought to have come to court after the respondent failed to tabulate, compute, and settle the same. In the circumstances, no compensation is due and payable for the allegedly unfair and unlawful redundancy as the same was by mutual consent. The item for compensation by all the grievants is thus denied and dismissed whether going by the name “compensation for delaying payment” or “maximum compensation”, both of which are either way not defined or explained in the pleadings or submissions. Such claims are inappropriate in the circumstances.
36. All the other items are the same or similar for all the grievants and the court shall deal with the items vis a vis what is awardable under the CBA and the various provisions of Section 40 of the Act recited in an earlier part of this judgment.



37. Clauses 16(f), 17, 18, and 19 of the CBA provide for the following entitlements to an employee upon redundancy –

16

(f). Entitlement of Redundant Employees

In the event of an employee being declared redundant he/she shall be entitled to the following:

- i. The normal notice as defined in this agreement
- ii. Payment of wages, overtime and other remuneration which may be due to her/him calculated up to the date he/she ceases work.
- iii. Prorata leave in accordance with this agreement
- iv. Severance pay on the basis;
 - a. Upto six (6) years – 25 days for each completed year of service.
 - b. For seven (7) years and above 30 days for each completed year of service.
 - c. Provident fund and other retirement benefits are in no way affected by this agreement.

17. Leave Travelling Allowance

Every employee proceeding on his/her annual paid leave after 12 months continuous service shall be entitled to leave traveling allowance of Kshs.2,000 shall be refunded upon product receipts spent above the said allowance.

18. Baggage Allowance

An employee who is retiring from the company's services at the official age of retirement, retiring on medical grounds, terminated or declared redundant, will be entitled to Kshs.10,000/= as Baggage Allowance. An employee who is summarily dismissed or resigns will not be entitled to this allowance.

19. Gratuity/Service Benefits

When an employee retires on reaching the normal age of retiring, retiring on medical grounds or dies while in service or is terminated at the initiative of the company or resigns shall be entitled to gratuity/service pay on the following basis:-

- a. Upto more than six (6) years – 25 days for each completed year of service
- b. For seven (7) years and above 30 days for each completed year of service.

38. As noted above, once a CBA is negotiated, agreed, executed, and registered it becomes part and parcel of the contract of employment and as such the employees serve on the terms of the CBA as long as such terms are not in violation of the law which logically means those terms should be better than those provided for in the law which provides only for the minimum. The grievants have opted to base their claim on the terms of the CBA, and rightly so, as the same are better than the minimum benefits provided for in Section 40 of the Act as alluded to in an earlier part of this judgment.



39. The respondent did not adduce evidence in opposition to the pleaded benefits. The court has scrutinized the benefits as pleaded vis a vis the provisions of the CBA cited and the court agrees with the claimant that the grievants are entitled to the reliefs sought as follows –

1. Jonathan Wandera Kshs.
 - i) Notice of one month 17,549.36
 - ii) Days worked May, June, & July 2020 52,648.08
 - iii) Pro-rata leave of 4 months 5,399.80
 - (iv) Annual paid leave of one month 17,549.36
 - v) Leave Travelling Allowance 2,000.00
 - vi) Severance payment of 22 years 445,483.75
 - vii) Baggage Allowance 10,000.00Grand Total 550,630.35
2. Sharon Jebet Cherutich Kshs.
 - i. Notice of one month 14,040
 - ii. Days worked May, June, & July 2020 42,120
 - iii) Pro-rata leave of 9 months 9,720
 - iv) Annual paid leave of one month 14,040
 - v) Severance payment of 14 years' service 226,800
 - vi) Leave Travelling Allowance 2,000
 - vii) Baggage Allowance 10,000Grand Total 318,720
3. Rhodah Naliaka Olanga Kshs.
 - i. One month notice 14,206
 - ii. Days worked May, June and July 2020 42,618
 - iii. Pro-rata leave 5,400
 - iv. Annual paid leave of on the month 14,040
 - v. Leave Travelling Allowance 2,000
 - vi. Severance payment for 7 years' service 113,400
 - vii. Baggage Allowance 10,000Grand Total 201,664
4. Caroline Vihenda Asunga Kshs.
 - ii. One month notice 14,040



- ii) Days worked May, June, July 2020 42,120
 - iii) Annual paid leave of one month 14,040
 - iv) Leave Travelling Allowance 2,000
 - v) Severance payment for 13 years 210,600
 - vi) Baggage Allowance 10,000
- Grand Total 292,800

5. Jacklyne Munyasia Mujera Kshs.

- i) One month notice 14,040
 - ii) Days worked May, June, July 2020 42,120
 - iii) Pro-rata leave 2,160
 - iv) Annual paid leave of one month 14,040
 - v) Leave Travelling allowance 2,000
 - vi) Severance payment for 13 years 210,600
 - vii) Baggage Allowance 10,000
- Grand Total 294,960

40. As stated above no compensation is due as the redundancy was entered into by consent and as such that relief of compensation is knocked out from the list of claims by each claimant as above.

41. The claimant is awarded costs of the cause.

VI. Orders

42. In view of all the above, judgment be and is hereby entered in favour of the claimant as follows –

- a. That the redundancy of the five named grievants was effected and executed through mutual consent between the claimant and the respondent and as such both parties are estopped from claiming otherwise.
- b. Judgment be and is hereby entered in favour of the claimant and the grievants are hereby awarded as follows-
 - i. Jonathan Wandera - Kshs.550,630.35
 - ii. Sharon Jebet Cherutich - Kshs.318,720.00
 - iii. Rhodah Naliaka Olanga - Kshs.201,664.00
 - iv. Caroline Vihenda Asunga - Kshs.292,800.00
 - v. Jackline Munyasia Mujera - Kshs.294,960.00
- c. The claimant is awarded the costs of the cause.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 26TH DAY OF JUNE, 2024.



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DAVID NDERITU
JUDGE

