



Kenya Chemical Workers Union v Polypipes Industries Limited (Cause E289 of 2020) [2024] KEELRC 13588 (KLR) (20 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13588 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E289 OF 2020
SC RUTTO, J
DECEMBER 20, 2024**

BETWEEN

KENYA CHEMICAL WORKERS UNION CLAIMANT

AND

POLYPIPES INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. The instant suit has been brought by the Claimant on behalf of the grievant, Bernard Muthini, who it avers is its member. The Claimant avers in the Memorandum of Claim dated 13th July 2020, that the dispute arose on 19th June 2017 when the Management of the Respondent retired Mr. Bernard Nzuma Muthini but refused to pay his Retirement benefits as contained in the parties' Collective Bargaining Agreement under Clause 12,17 and 29.
2. The Claimant avers that Mr. Muthini was employed by the Respondent on 1st September 1986 and was retired on 10th March 2017 hence he worked for the Respondent for 30 years.
3. That the Respondent addressed a letter to Mr. Muthini on 10th March 2017, which indicated that, he was to retire in the month of March 2017 and that his last working day was to be 31st March 2017. The letter was not given to him until 19th April 2017 which was a month later. That further, although he was advised to liaise with the Finance Department for his final dues, to date such benefits have never been cleared.
4. The Claimant further avers that according to Clause 12 of the CBA, Mr. Muthini was entitled to two (2) months' notice which was not given to him, hence the same was to be paid in lieu of notice.
5. It is further averred that Mr. Muthini's salary for April was not paid.
6. The Claimant further asserts that the Respondent did not respond to its letter of 19th June 2017 and a reminder was sent on 25th September 2017. The Respondent replied to this letter through theirs dated



- 5th October 2017 and forwarded calculations with respect to Mr. Muthini's final retirement benefits totaling Kshs 403,142.00.
7. That the Claimant consulted Mr. Muthini on the calculations and he accepted them. On 8th November 2017, the Claimant indicated to the Respondent Mr. Muthini's acceptance of the calculations and indicated that the Respondent had not included the salary for the month of April 2017 which he had worked in full.
 8. The Claimant further states that the Respondent did not honour its promise of clearing with Mr. Muthini immediately after they received their confirmation of agreement to the figures, hence the Claimant reported a trade dispute to the Ministry of Labour on 25th July 2018.
 9. The Respondent reacted when they received the Claimant's letter reporting a trade dispute and paid Mr. Muthini part of his retirement benefits amounting to Kshs 100,000.00 on 29th September 2018 through cheque No. 928163.
 10. According to the Claimant, the Respondent has not paid Mr. Muthini a balance of Kshs 303,142.00 plus Salary for the month of April 2017 of Kshs 23,234.00 bringing the total to Kshs 326,376.00.
 11. Against this background, the Claimant prays for the following reliefs:
 - a. That this Honourable Court be pleased to give Orders that, the grievant be paid his remaining balance immediately by the Respondent by issuing him with one cheque to cover the balance of Kshs 326,376.00 which is payable to him.
 - b. That this Honourable Court Orders' that, he be paid for the time he has been out of employment awaiting payment of his retirement benefits, as the Respondent could not have retired him if they did not have money to clear with him.
 - c. That this Honourable Court Orders' that, he be paid the retirement benefits with interest as the Respondent has been trading with his money for a period of more than three years, while he continues to suffer.
 - d. That this Honourable Court grant the grievant maximum compensation for the suffering he has endured since he was retired by the Respondent.
 - e. That the Respondent pay the cost of this suit.
 12. The Respondent countered the Claim through its Response to Claim dated 2nd May 2024. In its defense, the Respondent contends that the Claimant has no jurisdiction to bring this Claim by reason that Bernard Muthini has never been a member of the Claimant.
 13. The Respondent avers that Mr. Muthini could not benefit from the provisions of a collective bargaining agreement between the parties when he was not a member of the Claimant.
 14. The Respondent denies engaging the Claimant and avers that it had been engaged in correspondences with Mr. Muthini directly, as the Claimant had no legal standing to represent Mr. Muthini on any matter.
 15. The Respondent contends that it paid Mr. Muthini his dues and that nothing more is owed.
 16. When the matter came up for mention on 10th July 2024, both parties consented to have the matter determined by way of documentary evidence in terms of Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, 2016 (now revoked).



17. Subsequently, the Court directed the parties to file and exchange written submissions within specified timelines.

Submissions

18. The Claimant submitted that the Respondent is in contravention of all applicable laws and the CBA. To this end, the Claimant urged the court to award the grievant the reliefs as pleaded.
19. On its part, the Respondent submitted that the Claimant did not file evidence to show that Mr. Muthini was its member. It is the Respondent's contention that the Claimant failed to prove that it had the legal right to sue on behalf of Mr. Muthini. In support of its submissions, the Respondent placed reliance on the case of Joseph Kipkoech Kogo vs Kenya Fluorspar Company Limited (2005) KEHC 1699 (KLR)

Analysis and Determination

20. The Court has considered the issues raised in the pleadings by both parties, the documentary evidence on record as well as the rival submissions and isolated the following issues for determination: -
- a. Whether the Claimant has locus standi to sue the Respondent on behalf of the grievant;
 - b. Depending on the answer in (a), whether the grievant is entitled to the reliefs sought.

The question of locus standi

21. The Respondent is categorical that the grievant is not a member of the union hence the Claimant does not have legal standing to sue on his behalf.
22. Pursuant to Articles 22(2) and 258(2) (d) of *the Constitution*, it is evident that post *the Constitution* 2010, the principle of locus standi has been broadened and there is a wide latitude as to who can move the Court to enforce *the Constitution* and the Bill of Rights.
23. This position was amplified by the Supreme Court in Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others [2014] eKLR thus:
- “(67) It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of locus standi, in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill of Rights, or *the Constitution* in general. In John Wekesa Khaoya v. Attorney General, Petition No. 60 of 2012; [2013] eKLR the High Court thus expressed the principle (paragraph 4):
- “...the locus standi to file judicial proceedings, representative or otherwise, has been greatly enlarged by *the Constitution* in Articles 22 and 258 of *the Constitution* which ensures unhindered access to justice...”
24. At the heart of this dispute is the alleged failure by the Respondent to pay the grievant his terminal dues. As such, it concerns enforcement of the grievant's right to fair labour practices as enshrined under Article 41(1) of *the Constitution*.
25. Therefore, applying the provisions of Articles 22(2) and 258(2) (d) of *the Constitution* and the dicta in Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others [supra] to the case herein, it becomes apparent that the Claimant Union has locus standi to move the Court on behalf of the grievant as it has done.



26. The Respondent has further denied engaging the Claimant Union with respect to payment of the grievant's terminal dues. In this regard, it contends that it only engaged the grievant directly. This position is far from the truth as the record bears that vide a letter dated 5th October 2017, the Respondent addressed the Claimant Union forwarding tabulations of his terminal dues. Hence, why would the Respondent address the Claimant Union as it did if at all it did not acknowledge the Claimant as the grievant's representative in this case?
27. Accordingly, the Respondent's assertion that the Claimant has no legal standing to bring the suit on behalf of the grievant does not hold.

Reliefs

28. The Claimant has asked the Court to order the Respondent to pay the remaining balance of the grievant's terminal dues in the sum of Kshs 326,376.00.
29. From the record, the Claimant was notified of his retirement from the Respondent's employment vide a letter dated 10th March 2017. The said retirement was to take effect from 31st March 2017. Through the same letter, the Respondent notified the Claimant that he would be paid his terminal dues.
30. What followed were letters dated 19th June 2017 and 25th September 2017 from the Claimant Union to the Respondent, requesting for payment of the grievant's terminal dues.
31. In its letter dated 5th October 2017, the Respondent shared with the Claimant tabulation of the grievant's terminal dues totaling Kshs 535,882.00 less tax deducted bringing the terminal dues payable to Kshs 403,142.00.
32. The Claimant Union reverted to the Respondent vide its letter dated 8th November 2017, and advised the Respondent that the grievant had accepted the tabulation save for his salary for the month of April. To this end, the Claimant Union requested the Respondent to forward the grievant's cheque.
33. It is apparent from the record that the Respondent did not pay the grievant the terminal dues as indicated in its letter of 5th October 2017 hence a trade dispute was reported to the Ministry of Labour and Social Protection.
34. Subsequently, the Respondent paid the Claimant the sum of Kshs 100,000.00. Beyond this, there is no evidence confirming full payment of the grievant's terminal dues as tabulated by the Respondent in the letter of 5th October 2017.
35. According to the Respondent, it paid the grievant his terminal dues in full and does not owe him anything. This is not evident from the record seeing that the Respondent confirmed that the grievant's terminal dues were in the sum of Kshs 403,142.00. As such, I cannot help but question how payment of Kshs 100,000.00 amounted to full and final settlement of the grievant's terminal dues.
36. In the circumstances, it is crystal clear that the Respondent is yet to settle the grievant's terminal dues in full.
37. In the same vein, I must also say that the Respondent's assertion that the grievant cannot benefit from the terms of the CBA as he was not a member of the Union does not hold. I say so on account of the fact that it is the Respondent that computed the grievant's terminal dues as per its letter dated 5th October 2017 hence it cannot disown the same at this juncture.



Orders

38. In the final analysis, I enter Judgment in favour of the Claimant against the Respondent and the grievant is awarded the sum of Kshs 303,142.00. Interest shall apply on the said amount at court rates from the date of filing the suit until payment in full.
39. The Respondent shall bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Mutongoi

For the Respondent No appearance

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

