



Kenya Union of Commercial, Food and Allied Workers v Kahuti Water and Sanitation Company Ltd (Cause E013 of 2021) [2023] KEELRC 850 (KLR) (13 April 2023) (Judgment)

Neutral citation: [2023] KEELRC 850 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E013 OF 2021
ON MAKAU, J
APRIL 13, 2023**

**BETWEEN
KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT
AND
KAHUTI WATER AND SANITATION COMPANY LTD RESPONDENT**

JUDGMENT

1. The claimant is a registered trade union and it brought this suit on March 24, 2021 accusing the respondent of unfairly dismissing five employees (hereinafter called grievants.) The suit sought payment of terminal benefit, plus costs and interest at court rate.
2. The respondent filed defence on June 30, 2021 denying the alleged unfair dismissal of the grievants. It averred that the dismissal was fair because the grievants were caught attempting to steal HDPE and PPR pipes through the fence. It was further averred that the grievants were served with a show cause letter and also invited to a disciplinary hearing but they failed to exonerate themselves. It averred that the matter was conciliated upon at the Ministry of Labour and it accepted the computation of terminal dues but the grievants failed to clear with company as instructed through the dismissal letters. It maintained that it was always ready to pay the grievants on condition that they clear with the company first in accordance with the company policies. It prayed for the grievants to be ordered to clear with the company to enable it process their terminal dues.
3. The claimant filed Reply to defence on July 8, 2021 contending that although the respondent agreed to pay terminal dues after the conciliation, it paid only two out of the five grievants. It further averred that in all the correspondences between the parties herein, the respondent never raised the issue of clearance by the grievants, and as such that issue was now being raised as an excuse for delay. Consequently, it prayed for the reliefs sought to be granted.



4. On November 2, 2022, the parties informed the court that the whole claim had been settled except for the issue of costs and the court gave them a chance to negotiate settlement of the same. No settlement was reached and the court directed the parties to file submissions on the issue of costs for the court to determine.
5. The issue for determination herein is therefore whether the claimant is entitled to the costs of the suit.
6. The claimant submits that it is entitled to payment of costs because it was forced to file the suit after the respondent failed to pay the grievants their terminal dues as computed during the conciliation process. The respondent is in denial and submitted that the delay in payment was caused by the grievants when they failed to undertake clearance in accordance with the company policies in order for their terminal dues to be processed.
7. I have carefully considered the pleading, evidence and the submissions by both sides. There is evidence that after the matter was referred for conciliation, the respondent admitted that it was committed to settle the claim. The evidence is in the four letters by the respondent dated June 26, 2019 and August 20, 2019. After several reminders, the respondent wrote the letter dated October 5, 2020 alleging that it was prevented by Covid-19 pandemic from settling the dues. It then proposed to settle the dues by installments of Kshs.150,000.00 per month starting January 2021.
8. The claimant declined the proposal and made a counter proposal for settlement by 3 monthly instalments starting December 2020. The respondent responded seeking settlement by 4 equal monthly installments of Kshs 238,500.00 starting January 2021.
9. The respondent never paid the dues as promised and the claimant filed the suit herein on March 24, 2021. In all the said letters, failure to clear with the company was never cited as the reason for failure to pay the dues. The reason for delayed payment was cited as financial constraints. In the circumstance, the claimant was justified to file suit to recover the terminal dues owing to the grievants. Consequently, the claimant is entitled to payment of costs and I enter judgment in its favour in that regard. The costs shall be agreed upon or be taxed by the Deputy Registrar of this court.

DATED, SIGNED AND DELIVERED AT NYERI THIS 13TH DAY OF APRIL, 2023.

ONESMUS N MAKAU

JUDGE

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 April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

