



**Kenya Plantation Agricultural Workers Union v Sirgoek Flowers Limited (Cause E004 of 2021) [2023] KEELRC 3344 (KLR) (21 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3344 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E004 OF 2021  
MA ONYANGO, J  
DECEMBER 21, 2023**

**BETWEEN  
KENYA PLANTATION AGRICULTURAL WORKERS UNION ..... CLAIMANT  
AND  
SIRGOEK FLOWERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a Trade union registered under the [Labour Relations Act](#) to represent employees in the commercial and food sector.
2. The Respondent is a limited liability company carrying on the business of production and sale of flowers. The activities of the Respondent therefore fall within the jurisdiction of the Claimant and the Claimant is eligible to represent its employees in labour matters.
3. The Claimant instituted the instant claim vide a Statement of Claim dated 4<sup>th</sup> March 2020 seeking the following remedies:
  - a. This Honourable Court be pleased to direct the effective date of the CBA 2016-2018 is 1<sup>st</sup> April 2016.
  - b. An order directing that the duration of the CBA be 2 years from the effective date.
  - c. This Honorable Court be pleased to direct that a 20% increase wage increase be incorporated in the 2016-2018 CBA starting April,2016 to December 2017.
  - d. This Honorable Court be pleased to direct that a 20% increase wage increase be incorporated in the 2016-2018 CBA starting 2018.
  - e. An Order directing the Respondent to conclude, sign and register a Collective Bargaining Agreement with Claimant Union within 14 days of delivery of Judgment.



- f. Costs of this suit be awarded to the Claimant.
4. The Claimant alleges in the Statement of Claim that pursuant to its mandate it negotiated a Collective Bargaining Agreement (CBA) with the Respondent for the benefit of the Respondent's unionisable employees after the parties had signed a Recognition Agreement. The CBA was signed in 2015, its effective date is 1<sup>st</sup> April, 2014 and it was to remain in force for a duration of 2 years.
  5. It is averred that upon expiry of the CBA, the Claimant on 18<sup>th</sup> May, 2016 reached out to the Respondent with proposals for amendment of the CBA for negotiation of the 2016-2018 CBA.
  6. It is further averred that on 9<sup>th</sup> October, 2018 and 6<sup>th</sup> March 2019, parties held meetings and agreed on all clauses of the CBA with the exception of the general wage clause, the effective date of the CBA and the duration of the CBA.
  7. According to the Claimant, the Respondent is blind of the rise in the cost of living as at the time of filing suit four years had lapsed since the expiry of the registered CBA. It is the Claimant's case that the applicable compensatory period for the rise in the cost of living over the years should be 20% and not the 8% as proposed by the Respondent.
  8. The Claimant avers that the effective date of the CBA should be 1<sup>st</sup> April, 2016 and it should run until 1<sup>st</sup> March 2018.
  9. The Claimant further contends that the Respondent can sustain a wage increase as proposed by the Claimant since the increase is within its ability.
  10. The Statement of Claim and Summons to Enter Appearance were served upon the Respondent on 12<sup>th</sup> July 2023 and an affidavit of service sworn by the process server Diffinah Moithaga Nyamwange was duly filed on 25<sup>th</sup> September 2023.
  11. The Respondent entered appearance on 24<sup>th</sup> February 2021 through Kenei & Associates Advocates but did not file a Response to the Claimant's Statement of Claim, even after being given more time to do so by the court on 12<sup>th</sup> April 2023. The suit therefore proceeded as an undefended Claim. Only the Claimant filed written submissions on 26<sup>th</sup> September, 2023.
  12. In the submissions the Claimant reiterates the averments in the Statement of Claim and extracts the issues for determination to be the following:
    - i. What was the effective commencement date of the Collective Bargaining Agreement (CBA) herein and its duration?
    - ii. Whether the 20% wage increase to the Respondent's unionisable employees is merited.
    - iii. Should the court compel the Respondent to conclude, sign and register a CBA with the Claimant union?
  13. On the 1<sup>st</sup> issue the Claimant submits that section 59(5) of the *Labour Relations Act* provides that a collective agreement becomes enforceable and shall be implemented upon registration by the Court and be effective from the date agreed upon by the parties. That in the instant case the parties agreed on the effective date and the duration of the CBA.
  14. The Claimant submits that Clause 38 of the signed by the parties provides the effective date to be 1<sup>st</sup> April 2014 and that the CBA shall remain in force until amended by both parties and remain in force for two years and thereafter continue in force until amended.



15. It is submitted that the period between the date of expiry of the last CBA and the date when the new CBA was negotiated was covered by the above clause. That the Respondent's proposal that the effective date of the CBA be 1st August 2016 would amount to a denial of the right of the employees to arrears from the period when the last CBA expired which would constitute an unfair labour practice contrary to Article 41 of the *Constitution*. For emphasis the Claimant relied on the decision in *Mukiria Farmers' Co-operative Society Ltd v Jacob Rukaria & 5 others* [2017] eKLR where the court stated that the interpretation of the effective date would depend on the way that the clause was phrased. That a CBA being a contract, the court is expected to enforce the intentions of the parties as doing the contrary would constitute a violation of time-honored legal principles. The court further held that parties ought to phrase the clause in a manner that makes it clear that the CBA would continue to bind the parties after expiry but before negotiating another one.
16. It was submitted that in the instant case, clause 33 of the CBA made it clear that the CBA would continue to bind the parties after its expiry until the CBA was amended by both parties.
17. The Claimant further relied on the decision in *Kenya Airways Limited v Kenya Airline Pilots Association* (2013), where it was held that delayed negotiations over an employee's benefit is not a bar for claiming benefits for the lapsed period. That employees can seek to exercise the right to seek a work benefit to cover a period of retroactivity.
18. It was the Claimant's submission that based on the above analysis, the effective date of the CBA should be 1st April 2016.

#### **Whether the court should award a 20% wage increase to the Respondents unionisable employees**

19. The Claimant submitted that the employees were entitled to a wage increase of 20% as four years had passed since the expiry of the registered CBA. That there has been a rise in the cost of living and an increase in the consumer price indices since the expiry of the CBA which therefore calls for a general wage increase at a commensurate percentage. That there is a need to cushion the Claimant's members from the hard-economic circumstances occasioned by the erosion of their purchasing power for basic consumer goods and services. That this was affirmed in the case of *Kenya Game Hunting & Safari Workers Union v Micato Safaris* [2016] eKLR where the court stated that the purpose of a wage increase is to cushion the workers from inflation by enhancing their purchasing power. That purchasing power is usually eroded by inflation during the lifespan of an outgoing CBA.
20. It was further the Claimant's submission that the Respondent is able to sustain a wage increase and that the increase is within its ability. That the Respondent's financial position will not be a hindrance to the 20% increase as the company will be able to meet the wage increment demand. It was submitted that there is no evidence that the Respondent cannot meet the additional wage increase as it remains profitable. For emphasis the Claimant relied on the decision in *Kenya Chemical & Allied Workers Union v Leather Life EPZ* (2014).
21. It was further the Claimant's submission that there has been an improvement in productivity of the Claimant's members working with the Respondent. That as reiterated in *Kenya Chemical & Allied Workers Union v Leather Life EPZ* (2014), there has to be compensation on improved labour productivity. That the court further stated that workers ought to have a share in the wealth of the business especially when healthy profits have been made.
22. The Claimant further relied on the decision in *Kenya Ferry Services Ltd versus Dock Workers Union (Ferry Branch)* [2015] eKLR, where the Court quoted with approval the following excerpt from Justice Saeed Cockar by Writers Dharam Ghai and Charles Hollen in Discussion Paper Number 3,



- “28. Justice Saeed Cockar is quoted by Writers Dharam Ghai and Charles Hollen in Discussion Paper Number 3, Institute for Development Studies, University College Nairobi, titled '[The Industrial Court in Kenya: An Economic Analysis](#),' explaining the factors to consider in wage determination as follows:

“The Court has to consider various factors before wage increase is granted. An increase in the cost of living is only one such factor. One of the other important factors which cannot be overlooked is that the Worker should be able to get something more than compensation for the loss of money value, in order to move towards the ultimate objective of a higher standard of living. But this can be granted only if under competitive conditions, an Industry can be shown to be capable of paying a full living wage. This has further got to be consistent with the growth of the Country and its Development Plan”

These sentiments were made in Industrial Court at Nairobi Cause Number 89 of 1966. Unfortunately, the Authors of the Discussion Paper did not provide the names of the Parties, and attempts by this Court to have these details from the archives of the Industrial Court yielded no result.

29. The decision is an old one, but presents the basis upon which, the Industrial Court has considered wage increment over the years. There have been issued wage guidelines by Treasury before and after the above decision. These guidelines have tended to reflect the same factors developed by the Awards of the Industrial Court.
30. Section 12 [5] of the *Industrial Court Act* recognizes the wage guidelines, but does not place an obligation on the Court in applying the wage guidelines in its determination. This law is poorly worded, joining discretion and obligation. It states the Court may be bound. When is the Court bound, and when is it not bound, under this law Section 60 [6] [b] of the *Labour Relations Act* however is unambiguous, the Industrial Court shall not register a Collective Bargaining Agreement that does not comply with any directives or guidelines concerning wages, salary levels and other conditions of employment issued by the Minister. As seen above however, the Awards of the Industrial Court have endorsed the same standards sought to be achieved by the wage guidelines.”
23. The Claimant submits that the Court has to consider various factors before wage increase is granted. That an increase in the cost of living is only one such factor. That other important factors which cannot be overlooked are that the Worker should be able to get something more than compensation for the loss of money value in order to move towards the ultimate objective of a higher standard of living. But this can be granted only if under competitive conditions, an Industry can be shown to be capable of paying a full living wage. This has further got to be consistent with the growth of the Country and its Development Plan.
24. It is the Claimant’s submission that based on the above submissions, the employees ought to be awarded the requested wage increment.



25. On whether the Court should compel the Respondent to conclude, sign and register a CBA with the Claimant Union the Claimant submitted that it made efforts to have a new CBA in force in good time but the Respondent frustrated the implementation of the CBA hence leaving the Claimants members' rights unprotected. That refusal by the Respondent to sign a CBA amounts to unfair labour practice contrary to Article 41 of the *Constitution*. That in the circumstances, it is only fair and in the interest of justice that the Claimant is granted the prayers as in the Memorandum of Claim dated 4<sup>th</sup> March, 2020.

### Determination

26. Having considered the pleadings and submissions of the Claimant the issue for determination are what should be the effective date for the CBA for the period 2016-2018 and whether the employees of the Respondent are entitled to a wage increase of 20%.

27. Section 59 of the *Labour Relations Act* provides for effective date of CBAs as follows;

59. Effect of collective agreements.

1. A collective agreement binds for the period of the agreement –
  - a. the parties to the agreement;
  - b. all unionisable employees employed by the employer, group of employers or members of the employers' organisation party to the agreement; or
  - c. the employers who are or become members of an employers' organisation party to the agreement, to the extent that the agreement relates to their employees.
2. A collective agreement shall continue to be binding on an employer or employees who were parties to the agreement at the time of its commencement and includes members who have resigned from that trade union or employer association.
3. The terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.
4. A collective agreement shall be in writing and shall be signed by—
  - a. the chief executive officer of any employer, the chief executive or national secretary of an employers' organisation that is a party to the agreement or a representative designated by that person; and
  - b. the general secretary of any trade union that is a party to the agreement or a representative designated by the general secretary.
5. A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial Court and shall be effective from the date agreed upon by the parties.

28. The parties last CBA also provides for the effective date of the CBA as follows:

Clause 38 of the CBA

“This agreement shall be in force with effect from 1<sup>st</sup> April 2014 and remain in force for two years. Thereafter it shall continue in force until amended by both



parties. Either party desiring to amend this Agreement shall give the other three months' notice of intended amendment.”

29. The *Act* gives the parties leeway to agree on the effective date of the CBA. In their last CBA the parties agreed on the date of the CBA to be for two years and thereafter to continue in force until it is replaced by the next CBA. This is logical from the fact that a CBA terms are incorporated into the terms of employment of the employees whom it applies to from the date of registration thereof.
30. It was pleaded by the Claimant at paragraph 7 of the Statement of Claim that the Respondent proposed a wage increase of 8% for 2016 and a similar percentage for the second year. The Respondent having failed to file a response to the Statement of Claim, the Court can only presume that what the Claimant stated is the correct position. If this is so, then it means that the Respondent was cognizant of the fact that the next CBA was effective from 2016. Clause 38 of the parties last CBA also appears to have made this presumption.
31. The court is however cognizant of the time it took the Claimant to file this dispute which was filed on 3rd February 2021, some 6 years after the expiry of the last CBA. No explanation has been given for the delay in the filing.
32. The court further takes judicial notice of the effects of Covid-19 pandemic which ravaged the whole world from 2020 and caused a lockdown with catastrophic consequences on a lot of organizations.
33. Ideally, this being the CBA succeeding the last CBA it was logical that it takes effect upon the expiry of the last CBA being 1<sup>st</sup> April 2016. However, cognizant of the time that has lapsed since the period covered by the last CBA lapsed and in order to bring the parties to the present date, I will order that the CBA be effective from 1<sup>st</sup> April 2020 to 30<sup>th</sup> March 2022 so that the next CBA should cover the period from 1<sup>st</sup> April 2022.
34. On the wage increase, Section 15(5) of the *Employment and Labour Relations Court Act* provides that:
  - (5) In the exercise of its powers under this Act, the Court may be bound by the national wage guidelines on minimum wages and standards of employment, and other terms and conditions of employment that may be issued, from time to time, by the Cabinet Secretary for the time being responsible for finance.
35. Further, rule 37(1) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 provide that:
  1. In any economic dispute involving a collective agreement or any other issue where the Court considers it fit, the Court may order the Central Planning and Monitoring Unit to file a report within thirty days of service of the pleadings in any suit or such other time as the Court considers necessary.
36. In the instant case there was no report from the Central Planning and Monitoring Unit to guide the court in assessing the appropriate wage increase as the Respondent was non-responsive. According to the Claimant the Respondent offered to pay 8% for the 1<sup>st</sup> year and a similar percentage for the 2<sup>nd</sup> year. There is no basis upon which the Claimant can justify the award of 20% wage increase for both the 1<sup>st</sup> and 2<sup>nd</sup> years of the CBA. The Claimant did not make any submission on the inflation rate for the period under review. There is also no justification for the Claimant's assertion that the Respondent can afford the increases proposed by the Claimant as there were no financial reports on the performance of the Respondent.



37. For these reasons the Court can only go by what the Respondent offered being a wage increase of 8% each year. I accordingly award the same.
38. In summary, the court awards the following:
- i. Period covered by the CBA is two years from 1<sup>st</sup> April 2020.
  - ii. General Wage increase at the rate of 8% on 1<sup>st</sup> April 2020 and a further 8% on 1<sup>st</sup> April 2021.
  - iii. If any employees' wages shall be below the statutory minimum wage, they shall first be brought up to the statutory minimum wage before being awarded the general wage increase.
  - iv. There shall be no orders for costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 21<sup>ST</sup> DAY OF DECEMBER 2023**

**MAUREEN ONYANGO**

**JUDGE**

