



**Kaloki & 2 others v Kenya Aerotech Limited (Cause E237 of 2021)
[2022] KEELRC 1731 (KLR) (27 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1731 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E237 OF 2021**

**J RIKA, J
MAY 27, 2022**

BETWEEN

**JONAH MAKAI KALOKI 1ST CLAIMANT
IBRAHIM GITURU GATHIRUA 2ND CLAIMANT
JOSEPH CHURU OGWAI 3RD CLAIMANT**

AND

KENYA AEROTECH LIMITED RESPONDENT

JUDGMENT

1. The Claimants filed their Statement of Claim on March 18, 2021.
2. They wrote to the Court on April 14, 2021, asking the Court to have the file transferred to the Chief Magistrate’s Court.
3. The matter was placed for directions before the Judge, on November 10, 2021, when the Claimants appear to have changed their minds on their application for transfer of the Claim. In light of the Respondent’s failure to file Appearance and Response, the Claimants told the Court they wished to be heard on formal proof, before this Court.
4. They were heard and closed their case, on February 9, 2022.
5. They confirmed filing and service of their Final Submissions on March 11, 2022.
6. Judgment was reserved for July 20, 2022, but is ready earlier, on the date notified to the Parties, indicated below.
7. 1st Claimant’s case is that he was employed by the Respondent on November 28, 1992. He worked in various positions. He was retired on reaching the mandatory retirement age, on December 31, 2020. His grievance is that his correct salary, as per the workplace CBA of 2018/2019, was Kshs 24,820. He



was paid a monthly salary up to the date he was retired of Kshs 12,410. He was not paid terminal benefits which he pleads as follows: -

- a. Service pay at 21 days' salary for 28 years at Kshs 486,478.
 - b. Salary arrears for June 2017 to March 2020 at Kshs 119,000.
 - c. Salary arrears for April 2020 to December 2020 at Kshs 96,560.
 - d. Wana Sacco shares at Kshs 138,070.
Total...Kshs 840,108.
 - e. The Respondent to issue the Claimant with his Pension Contributions Statement of Account, and to pay the Claimant his Pension sum.
 - f. Costs.
 - g. Interest.
 - h. Any other suitable remedy.
8. The 2nd Claimant was employed on May 18, 1992, worked in different positions and left on December 31, 2020, in similar circumstances as the 1st Claimant. His salary under the CBA was Kshs 28,785. He was paid Kshs 14,393 monthly, until he left. He claims: -
- a. Service of 21 days' salary for 27 years at Kshs 544,000.
 - b. Salary arrears at Kshs 115,136.
 - c. Wana sacco shares at Kshs 174,000.
Total...Kshs 833,583.
 - d. The Respondent to issue the Claimant with his Pension Contribution Statement, and to pay the Pension sum.
 - e. Costs.
 - f. Interest.
 - g. Any other suitable relief.
9. The 3rd Claimant's grievance takes similar form, with that of his colleagues. He was employed on April 24, 1992 and retired on December 31, 2020. His salary as per the workplace CBA was Kshs 23,900 monthly. He was paid Kshs 11,951 as of the retirement date. He claims service pay of 21 days' salary over a period of 28 years at Kshs 468,451 and salary arrears of Kshs, 95,592. He seeks other reliefs sought by his colleagues.
10. The issues as understood by the Court are whether the Claimants were paid their retirement benefits in accordance with the existing CBA; and whether they merit the remedies as pleaded.

The court finds:-

11. The Claim is unopposed.
12. It is anchored on adequate oral and documentary evidence.



13. Among the key documents is the CBA for 2018- 2019, between the Respondent and Aviation and Airport Services Workers Union [AASWU]. The Claimants show that the CBA applied to them, through their pay slips, which capture trade union dues deducted from their salaries by the Respondent, in favour of the AASWU.
14. Further, the Respondent wrote to them on July 11, 2019, adjusting their respective salaries, following successful CBA negotiations with AASWU.
15. The pay slips show that despite the Respondent having adjusted the Claimants' salaries, it continued to pay them the existing salaries before adjustment.
16. The prayers for salary arrears are allowed.
17. Service pay is a benefit given to an Employee who has been retired upon reaching the mandatory retirement age of 55 years. The Claimants were retired under clause 45 of the CBA. It is clarified that service would be paid beside any other benefit catered by the Pension Scheme. It would not be hindered therefore, by the existing Pension Scheme or by the Claimants' registration under the N.S.S.F. The CBA offers the Claimants service pay on retirement, in addition to other benefits the Claimants were entitled to, under other Social Security Plans. They are granted service pay as claimed, under clause 45 of the CBA.
18. Their pay slips support the prayer for payment of WANA Sacco shares. The deductions are captured in the pay slips. Refund of these shares is merited and allowed as prayed.
19. It is clear from the pay slips that the Claimants were members of the Pension Fund. There are 2 items in the pay slips, one Pension Fund deduction of Kshs 720 and two, Voluntary Pension Deduction of Kshs 500 monthly. The Claimants seek an order compelling the Respondent to supply them with Pension Statements, and to pay Pension dues. They were advised on retirement that they would be paid their Pension, in accordance with the Respondent's Pension Scheme Trust Deed and Rules. The Respondent shall avail to the Claimants their Pension Statements of Accounts and pay their Pension in accordance with the Trust Deed and Rules.
20. Costs to the Claimants.
21. As the sums prayed above became payable upon retirement, and considering that the Respondent has dithered on payment for close to 2 years, the Claimants are granted interest at court rates from the date of retirement, till payment is made in full.

In sum, it is ordered:-

- a. The Respondent shall pay to the Claimants service, salary arrears and Sacco shares as follows-
 - 1st Claimant...Kshs 840,108.
 - 2nd Claimant...Kshs 833,583.
 - 3rd Claimant...564,053.
- b. The Respondent shall avail to the Claimants their Pension Statements of Account, and pay them Pension in accordance with the Trust Deed and the Rules.
- c. Costs to the Claimant.
- d. Interest allowed at court rates from the date of retirement, 31st December 2020, till Judgment is satisfied in full.



**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH
DAY OF MAY 2022.**

JAMES RIKA

JUDGE

