



Kenya Chemical Workers Union v Pyrethrum Processing Company of Kenya Limited (Cause 7 of 2020) [2022] KEELRC 1590 (KLR) (16 June 2022) (Judgment)

Neutral citation: [2022] KEELRC 1590 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 7 OF 2020
HS WASILWA, J
JUNE 16, 2022**

BETWEEN
KENYA CHEMICAL WORKERS UNION CLAIMANT
AND
PYRETHRUM PROCESSING COMPANY OF KENYA LIMITED RESPONDENT

JUDGMENT

1. The claimant is a union registered by the government on the August 11, 1958 as a trade union to represent the interest of workers engaged in chemical and allied industries in Kenya. The claimant and the respondent have established industrial relations machinery as contained in the Recognition Agreement signed by the parties on the August 10, 1961.
2. The background of the dispute is that the claimant submitted their proposal to the respondent containing a 15 item amendments on the 30th July, 2014 to study and respond with counter proposal to enable parties commence negotiations.
3. No action was taken by the respondent towards the negotiations of the amendments forcing the claimant to report the matter as a trade Dispute to the cabinet secretary Ministry of Labour and Social Protection on the March 13, 2018. The minister responded on the May 8, 2018 and appointed David Kirui of Nakuru labour office to act as a conciliator in the dispute.
4. The conciliator invited parties to a meeting on June 27, 2018 vide its letter of 1June 4, 2018 which the Respondent snapped and another meeting was convened for September 6, 2018. However, there was no fruitful results from the meeting.
5. On February 18, 2019, the Claimant received a letter from the Chief Industrial Relations Officer withdrawing the appointment of Mr. David Kirui and instead appointed another conciliator, Madam Margaret Obegi to act in the dispute. Madam Obegi convened a meeting between the parties on the



March 28, 2019 vide her letter dated March 21, 2019. Both parties attended the meeting however there was no amicable solution arrived at. Another meeting was convened for May 8, 2019 and a final one on June 12, 2019 however the issues were never resolved and the conciliator issued a certificate of unresolved dispute to the parties on July 17, 2019.

6. The issues that remain unresolved and before this court is the issue on Wage increase, leave allowance, House allowance, Shift differential, Safari Allowance, Disturbance allowance, Baggage allowance, sick leave and effective date and duration of agreement.
7. The Claimant avers that on the issue of wage increase, they are proposing an increase of 30% for the 1st year, another 30% for the second year and 30% for the 3rd Year.
8. On leave traveling allowance, the claimant is proposing that all staff be given leave allowance of Kshs. 10,500 which shall apply across all carder of staff.
9. On house allowance the claimant proposes that Grade 1 to 6, house allowance be paid Kshs 8500 for the 1st year, Kshs. 10,000 for the 2nd year and Kshs. 12,000 for the 3rd year. On those employees on job grade 7 to 9 they are proposing Kshs 10,500 for the 1st year, Kshs 11500 for the 2nd year and Kshs 13,000 for the 3rd year. On the employees on Job grade 10 to 9, Kshs 15000 for 1st year, Kshs 16000 for 2nd year and Kshs 17,000 for the 3rd year.
10. On shift differential, the claimant states that this court award all employees working on shifts across all cadres Kshs 4,000 for the 1st year, Kshs 4,500 for 2nd year and Kshs 5,000 for the 3rd Year.
11. On safari allowance the claimant prays that employee under job grade 1 to 6 and living in Nairobi, Mombasa, Kisumu, Eldoret, Malindi, Lamu, Kilifi and Kwale to be paid Kshs 5,500, those in Nakuru, Kericho, Kakamega, Embu, Naivasha, Nanyuki, Nyeri and Garissa be paid Kshs 3,500 while those in other towns be paid Kshs.2,500. Those employee under job grade 7, 8 and 9 and living in Nairobi, Mombasa, Kisumu, Eldoret, Malindi, Lamu, Kilifi and Kwale to be paid Kshs 6,000, those in Nakuru, Kericho, Kakamega, Embu, Naivasha, Nanyuki, Nyeri and Garissa be paid Kshs 4000 while those in other towns be paid Kshs.3000. those in Job grade 10(a),(b) &(c) and living in Nairobi, Mombasa, Kisumu, Eldoret, Malindi, Lamu, Kilifi and Kwale to be paid Kshs 7,500, those in Nakuru, Kericho, Kakamega, Embu, Naivasha, Nanyuki, Nyeri and Garissa be paid Kshs 5,000 while those in other towns be paid Kshs.4,000, while those under grade 10(d) and living in Nairobi, Mombasa, Kisumu, Eldoret, Malindi, Lamu, Kilifi and Kwale to be paid Kshs 8,500, those in Nakuru, Kericho, Kakamega, Embu, Naivasha, Nanyuki, Nyeri and Garissa be paid Kshs 6,000 while those in other towns be paid Kshs.5,500.
12. On subsistence allowance, it was stated that staff under job grade 10(a) to (d) be paid breakfast of Kshs 600 and meals of Kshs 1,500 while those below them be paid Kshs 500 for breakfast and Kshs 1,000 for the other meals.
13. On disturbance allowance, it was stated that the staff be paid Kshs 2500 for the 1st year, Kshs 3,500 for the 2nd Year and Kshs. 4,500 for the 3rd year.
14. On baggage allowance, it was averred that Kshs 50,000 be paid as baggage allowance for all staff across all cadres to cater for normal termination, early retirement on medial grounds and normal retirement.
15. On sick leave, the claimant is praying for payment of 60 days of the employees' sick leave on full pay and another 60 days on half pay in one calendar year.
16. It was stated that the effective date and duration of the agreement be the September 1, 2014.
17. The claimant therefore prayed for the following Reliefs be made; -



- a) That this Honorable Court will award each item in favour of the claimant as indicated above.
 - b) That, it is their prayer that this Honorable Court will not be used to deny workers o the Respondent right to have better terms and conditions of employment from negative employers like the respondent.
 - c) That such economic criteria intended to improve terms and conditions for employment, be fairly determined by the honourable court as it falls within the jurisdiction to reflect the workers economic and social status beneficial to their families.
 - d) That the respondent to pay costs of this suit.
18. The Federation of Kenya Employers entered appearance for the respondent on the February 28, 2020 however they did not file response to the claim.
19. This court directed parties to file written submissions with regard to the claim which the claimant filed on the November 29, 2021 however the Respondent did not file submissions either.

Claimant's Submissions.

20. The claimant submitted that they attempted to negotiate the issues before filing of this suit and after filling this suit which issues were never resolved. It was argued that the respondent alleged to seek permission from the Salaries and Remuneration Commission (SRC) to negotiate the CBA Amendments but have never communicated the outcome or decision of SRC.
21. It is submitted that the current CBA expired on the August 31, 2014 and effort to negotiate a new CBA and amendment thereof has taken over 7 years and all the time the Respondent uses the excuse that it has not been given green light by SRC to negotiate any new terms. It was further argued that the said excuse is a delaying tactic employed by the Respondent to deny its staff salary increment and better terms for more than 8 years now.
22. It is submitted that the counter proposal forwarded to the claimant by the Respondent on the meeting held on the August 17, 2021 is a mirror reflection of the SRC job evaluation which was completed and yet to be implemented as such the Respondent is trying to implement the AFA job grading and salary structure.
23. In conclusion it was submitted that the court compel the respondent to adopt and implement the AFA Job evaluation grading and salary structure as envisaged and advised by SRC in the year 2017.
24. I have examined the evidence and submissions of the claimant herein.
25. This matter proceeded undefended because the respondent did not file any defence nor submissions.
26. The issue before me concerns negotiation of a CBA wherein the claimants seek increment of various wages as submitted.
27. These negotiations have been pending since 2014 hence the push to have a change.
28. Given that these changes cannot be made solely by the Respondent, the Respondent being a Government Parastatal, the Salaries and Remunerations Commission has a duty to give advice on the way negotiations should proceed.
29. I therefore order that the Salaries and Remunerations Commission should henceforth be involved in these negotiations or give advice accordingly as would be directed by this court.



30. Costs in the course.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 16 TH DAY OF JUNE, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

George Gwako for claimant – present

Respondent – absent

Court Assistant - Fred

