



Kenya Union of Sugar Plantation and Allied Workers v West Kenya Sugar Company Limited (Cause 14 of 2021) [2022] KEELRC 3786 (KLR) (29 July 2022) (Judgment)

Neutral citation: [2022] KEELRC 3786 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE 14 OF 2021**

**JW KELI, J
JULY 29, 2022**

BETWEEN
**KENYA UNION OF SUGAR PLANTATION AND ALLIED
WORKERS CLAIMANT**
AND
WEST KENYA SUGAR COMPANY LIMITED RESPONDENT

JUDGMENT

1. The court on the May 5, 2022 entered judgment for the claimant and ordered the parties to compute and file in court the payable amounts with respect to the two grievants, under paragraph 42 of the judgment, within 14 days for adoption as judgment of the court as follows:-

"42. The court orders the claimant and the respondent to file tabulation of compensation under all the awards above within 14 days hereof for adoption by court failing which the court will tabulate the payable amounts and its orders will be final and in full determination of the dispute."
2. On the May 25, 2022 the parties appeared before me and sought for my ruling to clarify on some aspects of the judgment to enable them complete the computation.
3. The court considered the parties' submissions and rendered its ruling on the July 13, 2022 and ordered the parties to file joint computation or separately in 7 days failing which the court would adopt the computation filed in court on the May 23, 2022 by the claimant.
4. On the July 26, 2022 when parties appeared before me the respondent's counsel told the court they will adopt the tabulation filed by the claimant on May 23, 2022.
5. The claimant's tabulation of payable amounts is as follows:-



Claimant's Tabulation Of The Award

6. The claimant submits the following tabulations in respect to the judgment in the above case signed and delivered on the May 5, 2022.

The 1st grievant Patrick Lusimba

- a) 3 month compensation at CBA rate salary Kshs $(27,636.80 \times 3) =$ Kshs 82,910.40
- b) Notice pay of one month salary as per the CBA Kshs 27,636.80.
- c) Annual leave as per the CBA, 28 day per year of service
- i. In July 2013 to 31st April 2014 (10 month) the basic salary then was Kshs 19,861.
Applying the formula at clause 12c
Daily rate is $19,861 \times 12 \times 8 \text{hrs} \times 28 \text{ days} \times 10/12$ Kshs 17,824.30
2496
- ii. In May 1, 2014 to 31st April 2015 the basic salary then was Kshs 19,861.
Applying the formula at clause 12c
Daily rate is $21,847 \times 12 \times 8 \text{hrs} \times 28 \text{ days} =$ Kshs 23,520
2496
- iii. In May 1, 2015 to February 5, 2016 the basic salary then Ksh 24,032.
Applying the formula at clause 12 c
Daily rate is $24,032 \times 12 \times 8 \text{ hrs} \times 28 \text{ days} \times 9/12 =$ Kshs 19,410
2496
Total annual leave Kshs 60,754.30
- d) Salary underpayment as from July 2013 to February 5, 2016.
The grievant was paid a daily rate of kshs 358 which was the cumulatively paid on monthly basis. The underpayment is as follows:-
- i. July 2013 -31st April 2014 (10 month) the CBA basic salary was Kshs 14,097
Daily rate then was $19,861 \times 12 \times 8 \text{hrs} =$ Kshs 763.90
2496
Amount paid daily Kshs 358.00
Underpaid arrears daily Kshs $(763.90 - 358)$ Kshs 405.90



Period July 2013 to 31st April 2014 is Kshs 405.90 x 26 days x 10
= Kshs 105,534.00

- ii. May 2014 -31st April 2015 (12 month) the CBA basic salary was
Kshs 21,847.00

CBA Daily rate then was 21,847x12 x 8 hrs = Kshs 840.30

2496

Amount paid daily Kshs 358.00

Underpaid arrears daily Kshs (840.30-358) = Kshs 482.30

Period May 2014 to April 2015 is Kshs 482.30 x 26 days x12 =

Kshs 150,477.60.

- iii. May 2015 -February 5, 2016 (9month) the CBA basic salary then
was Kshs 24,032.

CBA daily rate then was 24,032x12x8hrs =Kshs 924.30

2496

Amount paid daily Kshs 358.00

Underpaid arrears daily Kshs (924.30 -358) =Kshs 566.30

Period May 2015 to February 5, 2016 is Kshs 566.30x26
daysx9=Kshs 132,514.20

The total salary arrears in respect to underpayment is

Kshs 388,525.80.

- f) Unpaid house allowance as from July 2013 to February 5, 2016

- i. July 2013 to 31st April 2014 Kshs 19.861x15% x10 month =Kshs
29,791.50

- ii. May 1, 2014 to 31st April 2015 Kshs 21,847x15%x12month
=Kshs 39,324.60

- iii. May 1, 2015 to February 5, 2016 Ksh 24.032x15% x 9 month =
Kshs 32,443.20

Total unpaid house allowance Kshs 101,559.30

Total calculation the award for 1st grievant Kshs 661,386.60

The 3rd grievant Wilson Imbenzi Sundwa

- g) 3 month Compensation at CBA rate cross salary Kshs (16.211.55x3) = Kshs
48,634.65

- h) Notice pay of one month salary as per the CBA Kshs 16,211.55

- i) Annual leave as per the CBA, 28 days per year of service.

- i) In June 2013 to 31st April 2014 the basic salary then was



Kshs 14097.

Applying the formula at clause 12c

CBA daily rate is $14,097 \times 12 \times 8 \text{hrs} \times 28 \text{days} \times 11/12 = \text{ksh.}13,916.30$

2496

- ii) In May 1, 2014 to 31st April 2015 the basic salary then was Kshs 15,506

Applying the formula at clause 12 c

Daily rate is $15,506 \times 12 \times 8 \text{hrs} \times 28 \text{days} = \text{Kshs } 16,698.80$

2496

- iii) In May 1, 2015 to February 5, 2016 the basic salary then was Ksh 17,057

Applying the formula at clause 12 c

Daily rate is $17,057 \times 12 \times 8 \text{hrs} \times 28 \text{days} \times 10/12 = \text{Kshs } 15,307.50$

2496

Total Annual leave. Ksh.45,922.60

i. Salary Underpayment As From July 2013 To February 5, 2016.

The grievant was paid a daily rate of kshs 208 which was cumulatively paid on monthly basis. The underpayment is as follows:-

- ii. June 2013 -31st April 2014 (11month) the CBA basic salary was Kshs 14,097

CBA daily rate then was $14,097 \times 12 \times 8 \text{hrs} = \text{Kshs } 542.20$

2496

Amount paid daily Kshs 208.00

Underpaid arrears on daily basis $\text{Kshs } (542.20 - 208.00) = \text{Kshs } 334.20$

Period June 2013 to April 2014 is $\text{KshS } 334.20 \times 26 \text{days} \times 11 = \text{Kshs } 95,581.20$

- iii. From May 2014-31st April 2015 (12month) the CBA basic salary then was Kshs 15,506

CBA daily rate then was $15,506 \times 12 \times 8 \text{hrs} = \text{Kshs } 596.40$

2496

Amount paid daily Kshs 208

Underpaid arrears daily $\text{Kshs } (596.40 - 208) = \text{Kshs } 388.40$

Period June 2014 to April 2015 is $\text{Kshs } 388.40 \times 26 \text{days} \times 12 = \text{Kshs } 121,180.80$

- iv) From May 2015 -5th Feb 2016(9month) the CBA basic salary was Kshs 17,057

Daily rate then was $17,057 \times 12 \times 8 \text{hrs} = \text{Kshs } 656.00$

2496



Amount paid daily Kshs 208.00

Underpaid arrears daily Kshs (656.00-208) = Kshs 448

Period June 2015 to February 5, 2016 is Kshs 448x26daysx9=Kshs 104.832

The total salary arrears in respect to underpayment is Ksh.321,594

i) Unpaid house allowance as from July 2013 to February 5, 2016

i. June 2013 to 31st April 2014 Kshs 14,097 x15%x11month = Kshs 23,260.05

ii. May 2014 to 31st April 2015 Kshs 15.506 x15%x12month =Kshs 27,910.80

iii. May 2015 to February 5, 2016 kshs 17.057x15%x 9month = Kshs 23,026.95.

Total unpaid house allowance = Kshs 74,197.80

Total award tabulation for the 3rd grievant Kshs 506,560.60

7. The claimant submits that in its computation above it have factored the court's findings that the 1st grievant Patrick Lusimba was an automotive mechanic helper while the 3rd grievant Wilson Sundwa worked as a general worker. As such the above calculations have been done on the basis of job group UC 6 and UC1 respectively and in line with the successive CBAs clause 34.

8. The court adopts the computation by the claimant, the respondent having adopted the same and enters final judgment for the claimant against the respondent as follows:-

9. 1st grievant award(Patrick Lusimba)

- a. Compensation award Kshs 82,910.40
- b. Notice pay for 1 month salary Kshs 27,636.80
- c. Accrued annual leave award of Kshs 60,754.30
- d. Salary arrears underpayment Kshs 388,525.80
- e. Unpaid housing allowance Kshs 101,559.30

Total award of sum of Kshs 661,386.60 to the 1st grievant (payable subject to statutory deductions)

10. 3rd grievant award (Wilson Imbenzi Sundwa)

- i. Compensation award Kshs 48,634.65
- ii. Notice pay for 1 month salary Kshs 16,211.55
- iii. Accrued annual leave award of Kshs 45,922.60
- iv. Salary arrears underpayment Kshs 321,594/-
- v. Unpaid housing allowance Kshs. 74,197.80

Total award of sum of Kshs 506,560.60 to the 3rd grievant (payable subject to statutory deductions)

11. Interest is awarded to the claimant on the above awards (7 and 8) at court rates from date of judgment until full payment.

12. No order as to costs.



13. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF JULY 2022 IN OPEN COURT AT BUNGOMA.

JW KELI,

JUDGE.

IN THE PRESENCE OF:-

Court Assistant:- Brenda Wesonga

For Claimant:- Absent

For Respondent: Absent

