



Kenya Union of Commercial Food & Allied Workers v MMA Engineering Service Limited (Cause 1097 of 2017) [2022] KEELRC 1236 (KLR) (21 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1236 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1097 OF 2017
L NDOLO, J
JULY 21, 2022**

**BETWEEN
KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS CLAIMANT
AND
MMA ENGINEERING SERVICE LIMITED RESPONDENT**

RULING

1. By its Memorandum of Claim dated 2nd June 2017 and filed in court on 15th June 2017, the Claimant Union seeks conclusion of a Collective Bargaining Agreement (CBA) with the Respondent.
2. The Respondent did not respond to the Claimant's claim, in spite of due service. The Claimant chose to prosecute its claim by way of written submissions.

The Claimant's Case

3. The Claimant states that pursuant to a Recognition Agreement with the Respondent, the first CBA was concluded to run from 1st January 2015 to 31st December 2015.
4. The Claimant further states that on 12th April 2016, it forwarded proposals for review of the said CBA to the Respondent. The Claimant adds that it had proposed a meeting to be held on 27th April 2016 upon the Respondent submitting its counter proposals but the Respondent did not submit any counter proposals.
5. At the meeting of 27th April 2016, the parties failed to agree on most of the clauses and on 24th May 2016, the Claimant reported a dispute to the Cabinet Secretary, Ministry of Labour as provided under Section 62 of the *Labour Relations Act*.
6. By letter dated 7th June 2016, D.K Nyaga of Industrial Area Labour Office, was appointed as Conciliator in the dispute.



7. By letter dated 28th July 2016, the Conciliator convened a meeting for 9th August 2016, after which the parties attempted to reach an agreement on the disputed clauses.
8. On 6th October 2016, the Conciliator invited the parties to another meeting on 14th November 2016 after which the parties sought to agree on the outstanding clauses.
9. The Claimant faults the Conciliator for failure to issue a conciliation report or referral certificate.
10. The Claimant states that the parties have failed to agree on; overtime, medical attention, gratuity, redundancy, house allowance, transport, bonus, basic minimum wage and general wage increase.
11. The Claimant then goes ahead to set out its proposals on each of these items.

Determination

12. In its proposals, the Claimant asks the Court to adopt the following recommendations on the disputed items:
 - a. Overtime to be paid at 1.5 hourly rate and at double rate for Sundays and gazetted public holidays;
 - b. Medical cover to be provided to each employee and their nuclear family subject to the age limit of 18 years for children;
 - c. Gratuity to be paid as follows: 1-5 years-30 days for each completed year of service; 5-10 years-45 days for each completed year of service; over 10 years-60 days for each completed year of service;
 - d. Redundancy: the principle of last in first out to apply; the Union to be informed of intended redundancy and employees to be given a one-month notice; severance pay to be paid at 30 days' pay for each completed year of service; annual leave & leave allowance to be paid to affected employees;
 - e. Bonus to be paid at one month's salary at the end of the year;
 - f. General wage increase at 25% in the 1st year and 25% in the 2nd year.
13. The Court has considered the Claimant's proposals to which the Respondent did not make any counter proposal. The proposals on overtime, medical cover and redundancy mirror what is provided for in law and are therefore confirmed.
14. The Claimant did not provide any justification regarding its proposals on gratuity, bonus basic minimum wage and general wage increase, which are therefore rejected.
15. I make no order for costs.
16. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF JULY 2022

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JUDGE

Appearance:

Mr. Muunda for the Claimant



No appearance for the Respondent

