



Kenya Union of Sugar Plantation Allied Workers v Western Kenya Sugar Company Limited (Cause 14 of 2021) [2022] KEELRC 1284 (KLR) (13 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1284 (KLR)

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

JW KELI, J

JULY 13, 2022

(FORMERLY KISUMU ELR CAUSE NO. EO24 OF 2021)

BETWEEN

**KENYA UNION OF SUGAR PLANTATION AND ALLIED
WORKERS CLAIMANT**

AND

WESTERN KENYA SUGAR COMPANY LIMITED RESPONDENT

RULING

1. This ruling is on various issues raised by the Respondent on tabulation of award amounts in Judgment delivered in the instant claim delivered on the May 5, 2022. On the May 25, 2022 the parties appeared before me and the Respondent sought clarification on the following issues:-
 - (A). Whether the tabulation of the of the award amounts for underpayment, annual leave, and housing allowance for the period from June 2013 to 30th April 2016 would be based on the Collective Bargaining Agreement between the parties produced in court being CBA of 1st May 2015 to 30th April 2017
 - (B). The Court to clarify the exact date from which the contracts of 1st and 3rd grievants are deemed to have been converted from casual to term contract employees
 - (C). Under paragraph 26 and 28 of the judgment whether it is the court's interpretation of Lady Justice Maureen Onyango 's decision in ELRC Kisumu No. 258 of 2018 that the learnt Judge decided in the case that casual workers are members of the union by default.



Determination on the issues raised by the Respondent

A. Whether the tabulation of the of the award amounts for underpayment, annual leave and housing allowance for the period from June 2013 to 30th April 2016 would be based on the Collective Bargaining Agreement between the parties produced in court being CBA of 1st May 2015 to 30th April 2017

2. The Claimant on this issue submitted that on conversion of casual employment the applicable CBA is then one in existence then.
3. The Court agrees with the position taken by the Claimant being that the applicable CBA is one in existence during the periods in question. A CBA is applicable during its valid period. It is not retrospective unless the parties agree it to be.

B. The Court to clarify the exact date from which the contracts of 1st and 3rd grievants are deemed to have been converted from casual to term contract employees.

4. On this issue the Claimant submitted that the date of conversion of employment is the date of engagement as casuals.
5. The applicable law is section 37 (3) of the *Employment Act* which reads, “an employee whose contract of service has been converted in accordance with subsection (1) and who works continuously for two months or more from the date of employment as a casual employee shall be entitled to such terms and conditions of service as he would have been entitled under this Act had he not initially been employed as a casual employee”.
6. The court determines that the exact date the casual engagement of Patrick Lusimba converted to employment is 1st July 2013 as per finding under paragraph 23 of the Judgment. The exact date of conversion of casual engagement to employment with respect to Wilson Sundwa 1st June 2013 as per the finding under paragraph 25 of the judgment.

C. Under paragraph 26 and 28 of the Judgment whether it is the court’s interpretation of Lady Justice Maureen Onyango ‘s decision in ELRC Kisumu No. 258 of 2018 that the learnt Judge decided in the case that casual workers are members of the union by default.

7. The Claimant submitted that the case cited in the judgment is ELRC Kisumu Cause No. 110 of 2013 and not 258 of 2018.
8. The court finds and determines that under paragraph 26,27 and 28 the court referred to judgment of Lady Justice Maureen Onyango in ELRC Kisumu cause No. 110 of 2013 and the reference is self-explanatory in the judgment.
9. The Court having issued the above clarification now Hereby Directs the parties to file agreed tabulation on the award amounts under the Judgment and if they do not agree to file separate tabulation as directed in the judgment within 7 days from today failing which the court will adopt the tabulation filed in court by the Claimant on the 23rd May 2022 as final judgment.
10. Mention on 26th July 2022 to confirm compliance and give date for delivery of the partial judgment on the payable amounts under the awards.

It is so ordered.



DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 13TH DAY OF JULY 2022.

J.W. KELI,

JUDGE.

In the Presence of:-

Court Assistant : Brenda

Claimant:- Jeremiah Akhonya

Respondent: Mr Andiwo Advocate

