



**Ajuoga & 18 others v Kenya Seed Company (Cause 251 of 2016)  
[2022] KEELRC 4873 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4873 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 251 OF 2016  
HS WASILWA, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**BENARD AJUOGA & 18 OTHERS ..... CLAIMANT**

**AND**

**KENYA SEED COMPANY ..... RESPONDENT**

**JUDGMENT**

1. The claimants sued their employer, Kenya Seed Company Limited, seeking to recover their unpaid dues which they alleged arose out of con-compliance with the Collective Bargaining Agreement (CBA). In their memorandum of claim dated June 28, 2016, the claimants prayed for the following reliefs;
  - a) Payment of the sum of Kshs 8,455, 786.40 being the total unpaid dues owing to the claimants.
  - b) Interest on (a) & (b) above at court rates from December 1, 2014 till payment in full.
  - c) Any other or further relief that this honourable court may deem fit to grant.
  - d) Costs of this suit.
2. The summary of this case is that, the claimants were employed by the respondent on various years to various departments on different positions. That, each entered into an employment contract with the latest commencing on December 1, 2014, to December, 2015 and others running up to May, 2016. During that time, the Collective Bargaining Agreement (CBA) subsisting was the one of March 11, 2015, which governed all the employment contracts of the claimants as they are all members of the Union.
3. In the CBA of March 11, 2015, the claimants were entitled to House allowance under article 5, salaries increase under Articles 23& 24, commuter allowances under article 9 and leave allowance under article 10 of the CBA.



4. It is averred that the respondent has been in compliance with the previous CBA until December 1, 2014, when he failed to make payments of the allowances indicated in the CBA. Subsequently, on December 1, 2015, the claimants through the union raised the issue of non-payment of allowances with the respondent and proposed a meeting to discuss the way forward, which the respondent failed to attend. Several reminders were sent to the respondent, which none elicited a response. The cumulative dues owing to the claimants is Kshs 8,455,786.40.
5. The matter was first mentioned on December 9, 2016, where the court (Justice Radido) referred it to the ministry of labour for conciliation. Joel Omweno, was appointed conciliator in the matter and tasked with the issues raised by the parties. Upon conclusion of the process, the parties, being the respondent and the trade union, entered into a consent dated January 12, 2017, forwarded to court and filed by the letter dated March 30, 2017 indicating that the parties had agreed to drop the house allowance and commuter allowances as the claimants are all housed by the respondent and the remaining issues were forwarded to the labour office in Kitale who was dealing with similar issues of employees in Kitale who were the majority. That the claimants were all paid their balances and the suit settled in full.
6. On October 16, 2017, the respondent entered appearance through Federation of Kenya Employers(FKE) but did not file a defence till June 2, 2021. In the defence, the respondent admitted that the claimants through their union had reported trade dispute in 2015 under Trade Dispute Number MLSS/LD/IR/2/155/2015. The issue was conciliated upon and an amicable solution was arrived at, where the union acting in the interest of the claimants dropped the house and commuter allowances on the basis that the claimants were housed by the respondent as such do not incur commuter and House rent costs. The pending issue being salary arrears was paid through the union, which all claimants were paid and the matter fully settled.
7. It is stated that on November 15, 2017, this court directed the respondent to file in court certificate, evidencing the payment, which was filed on February 19, 2018. Subsequently, when this matter was mentioned in court on October 3, 2018, the court directed the claimants to follow up their payments with Kitale Labour Office.
8. The respondent maintained that the issue before this court were fully settled and there is nothing left for this court to adjudicate upon.
9. This suit was heard on July 28, 2021 and June 8, 2022, where the claimants called two witnesses and the respondent called one witness and each closed their case.

### **Claimants' Case**

10. Caleb Okare, the 5<sup>th</sup> claimant, testified as CW-1 and adopted his witness statement dated June 21, 2021. In addition, he testified that he worked for the respondent from 2002 as a casual labourer till March, 2016 when he entered into a 6 months' contract as a chemical dresser. He stated that in the contract, he was to be paid House allowance, commuter allowance, salary increase and leave allowance, however that the respondent only paid him his salary without any allowances. Despite several reminders to them by the union, the respondent did not comply. He stated that the respondent owes him Kshs 386,504. He added that pursuant to the direction of the court, each of the claimants herein was paid Kshs 18,096/- only.
11. Upon cross examination by Masese Advocate, CW-1 testified that he was a member of Kenya Union of Commercial, Food and Allied Workers (KUCFAW) for two years. He stated that KUCFAW negotiated the issues herein on their behalf and when the matter was referred before a conciliator the respondent



- was not present. He admitted that in the certificate filed before court, his name appears at number 50 and indeed he was paid Kshs 18,096 only.
12. Upon further cross examination, he stated that they were not housed by the respondent, in fact that there is no company house in Nakuru that can house them, therefore the allegation that they were housed is false.
  13. Bernard Ajuoga, the 1<sup>st</sup> claimant testified as CW-2. He also adopted his witness statement dated May 13, 2021 and in addition stated that he worked for the respondent from 2004 as a casual labourer then later promoted to be a quality assurance officer, which position he held till March 31, 2016. He stated that he was a member of the KUCFAW Union that entered into a CBA with the respondent dated March 11, 2015, which gave them allowances such as commuter, house allowance, leave allowance, salary increase, among others. He testified that despite the CBA providing for these allowances, the respondent did not pay them any other even after being reminded by the union to comply. He stated that they cumulatively are owed Kshs 8, 455,786 as tabulated in the annexure 3 of the list of documents. He admitted that a sum of Kshs 343,824 was paid to the 19 claimants, which each received Kshs 18096 leaving a balance of Kshs 8,111,962.40.
  14. Upon cross examination by Masese Advocates, CW-2 testified that he was a member of KUCFAW, and their representative was one Ochola not Egesa. He stated that the respondent was not present at the labour office and therefore no meeting took place. On the letter of November 7, 2017 addressed to the respondent's managing Director, the witness stated that the issue raised therein are different from what's before court. He admitted receiving Kshs 18000 from the labour office after they served the respondent with a court order.

#### **Respondent's Case.**

15. The respondent's Human Resource and Administration manager, Stephen Kibet Malakwen, testified as RW-1. He adopted his witness statement of May 30, 2022 and stated that he has worked for the respondent for 19 years. He testified that the claimants were employees of the respondent on short term contracts and were all unionisable employees, under KUCFAW. He stated that upon expiry of their contract, none was renewed. He stated that the claimants through the union, took the respondent to the labour office on the issue of non-payment of allowances. After negotiations, the union agreed to drop the house allowance and commuter allowance and the arrears pending were referred to Kitale Labour office for further discussion as the majority of employees were based in Kitale region. He also stated that the money owing was fully settled by the respondent.
16. Upon cross examination by the Otieno Advocate, the witness testified that the issue was discussed before Kitale labour office, though all the claimants herein were in Nakuru Branch. He stated that the money deposited in Kitale labour office was to cover all the claim save for house allowance and commuter allowance. He stated further that Justice Mbaru ordered the claimants to collect their dues from Kitale Labour office and the matter closed thereafter.
17. On re-examination, the witness testified that the issue for negotiation was overtime, commuter allowance, house allowance and minimum wages and the 2 Million paid to labour office in Kitale covered all the other claims save for house and commuter allowances that were dropped by the claimants through their union.

#### **Claimants' Submissions.**

18. It was submitted for the claimants that they are entitled to the orders sought for the reason that they were not housed by the respondent and the allegation that they were housed was a misrepresentation



from the respondent. It was argued that according to the CBA, house allowance due to each of the claimants was 10,500. On commuter allowance the claimant submitted that each claimant as per the CBA was to be paid Kshs 3200 per months and leave allowance was Kshs 10,500. He argued further that the Kshs 18,096 did not cover the claim as alleged and therefore that this court should order the respondent to pay them their rightful dues.

### **Respondent's Submissions.**

19. The respondent on the other hand submitted that the issues before court were subject of discussion before a conciliator, where parties agreed on the issue and recorded an agreement dated January 12, 2017 in accordance with section 68 of the *Labour Relations Act*. The issues that were due for payment were fully settled, a fact which was confirmed by this court on October 3, 2018, therefore having settled the issue by conciliation, the claimants as well as the respondent are bound by the terms of the said consent unless it is reviewed. To support it case they relied on the case of *Kenya Shoe and Leather Workers' Union v Modern Soap Factory*, Cause 197 of 2015 where the court held that;

“In my view, and as submitted by the defence, where parties like in this case, chose and fully submit themselves to conciliation process under section 62 of the Act to its finality, they are bound to respect and fulfil the decision/recommendations expressed by the conciliator and avoid unnecessary litigation. The forgoing view is buttressed by the decision of Ndolo J in *Wario Gorise v Vicky Nyaithiru Kabetu* [2013] eKLR where she quoted from another decision of this court in *Elizabeth Wanjiru Njogu v Kangei Nyakinyua Building Co Limited* where it was held as follows:

"A party who voluntarily submits himself to ADR and even reaps the benefits thereof cannot come to court and question the process if they did not take issue during the process. The court will only interfere with the process and/ or outcome of ADR if manifest miscarriage of justice has occurred or where the *constitution* or any written law has been contravened."

In view of the foregoing finding that the parties herein accepted the decision by the conciliator and so far benefited from the same, the dispute stands resolved by dint of that choice to be bound by the conciliator's decision. I will therefore dismiss the entire suit with no order as to costs but direct the parties to comply with the same conciliator's recommendations.”

20. Accordingly, the respondent submitted that the issues as per the consent before court and certificate of payment demonstrate that the claimants were fully paid and having agreed to drop the house and commuter allowance pay cannot raise it at this point.
21. In conclusion, the respondent urged this court to disallow the claim with costs.
22. I have examined all evidence and submissions of the parties herein.
23. The respondents have argued that all the issues herein were subjected to reconciliation and the issues agreed upon as per the consent dated January 12, 2017.
24. Whereas the respondent refer court to a consent of January 12, 2017 none is exhibited before this court.
25. Other than this omission a ruling of this court dated March 12, 2020 indicated that the claim for non-payment of house allowances, wages/salaries, commuter allowance, annual leave and leave travelling allowances in accordance with the CBA was still standing.



26. The court noted that the full settlement of the claim was still outstanding and the respondent owed the claimant 8,111,962/=.
27. The argument by the respondent that the claim was settled by consent is therefore not true and needs to be resolved.
28. The claimants have demonstrated that there was a CBA signed by the claimants union and the respondent.
29. The CBA in effect provided for arrears to be paid inclusive of allowances which the claimant insist have never been paid.
30. There is no consent before court to show payments made or waiver if at all.
31. It is therefore my finding that the claim remains unpaid save for the 2 million paid and acknowledged by the respondent's APP 3 where 2,051,428.30/= was paid out to the Ministry of Labour and Social Service. Going by APP 4 of the claimant's exhibits at page 196, what is unpaid therefore is 8,455,786.40/= less 2,051,428.30/= paid to the Labour Office leaving a balance of Kshs 6,404,358.10/= which I award the claimants plus costs with effect from the date of filing this suit.
32. The respondents will pay costs of this suit.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Chepngetich holding brief for Otieno for Claimant – present

Masese for Respondents – absent

Court Assistant - Fred

