



**Kenya Union of Commercial, Food and Allied Workers v New Weithaga Farmers Cooperative Society Ltd (Cause E009 of 2021) [2022] KEELRC 13135 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13135 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E009 OF 2021  
DKN MARETE, J  
OCTOBER 31, 2022**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**NEW WEITHAGA FARMERS COOPERATIVE SOCIETY LTD .. RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Claim dated February 9, 2021. The issue in dispute is therein cited as;  
  
Failure to pay Employees Salaries from October 2018 to date
2. The Respondent in a Respondent's Defence and Partial Admission dated March 30, 2021 agrees with the claim and offers to come up with a schedule for payment of salary accrued or claimed.
3. The claimant's case is that the parties herein relate through a valid Recognition Agreement culminating in a Collective Bargaining Agreement registered as such in this court.
4. It is the claimant's further case that the Respondent has a workforce of eleven (11), all employed on diverse and different dates and these have not been paid their salaries from October, 2018 to date. The total dues are Kshs 4,901,192.00 as at the date of this suit.
5. The claimant's other case is that the parties have kept touch over the issue of non-payment of salaries but has been met with frustrations of all agreements *inter partes* on payments. This is despite the matter being referenced to conciliation.

She prays thus;



- i. Pay all the eleven employees their twenty three (23) unpaid salaries in full as per App 3 amounting to Kshs 4,901,192.00.
  - ii. That the Respondent to remit statutory deduction to all the relevant institutions e.g. Trade Union NSSF, NHIF, PAYE among others.
  - iii. That the respondent to be restrained from intimidating any employee herein on the basis of this dispute.
  - iv. Respondent to pay interest at the court rate in item (i) above.
  - v. Cost of this suit in favour of the claimant.
6. The Respondents case is that she is still committed to make arrangements to offset the arrears of salaries once her financial status stabilises.
  7. Her further case is that she is willing to come up with a schedule of salary payments as outlined at paragraph 6 of the claim in due course. It is her case that the non-payment is a consequence of a lull in 2022 to 2021 due to Covi-19 epidemic.
  8. The issues for determination therefore are;
    1. Whether the eleven (11) unionisable employees of the claimant are entitled to twenty three (23) unpaid salaries amounting to Kshs 4,901,192.00 and further salaries to date.
    2. Whether the Respondent should be ordered to remit statutory dues and other deductions e g Trade Union, NSSF, NHIF, PAYE among others.
    3. Whether the Respondent should be restrained from intimidating her employees arising out of this dispute.
    4. Who bears the costs of the cause.
  9. The 1st issue for determination is whether the eleven (11) unionisable employees of the claimant are entitled to twenty three (23) unpaid salaries amounting to Kshs 4,901,192.00 and further salaries to date. The claimant in her written submission dated April 8, 2022 submits a case for grant of the orders sought. The Respondent does not file any written submissions in this regard.
  10. This court finds the matter simple and straight forward. The claimant has pleaded a case of non-payment of salaries and non-remission of union dues and statutory deductions as appropriate. It is her case that despite several attempts at conciliation, the Respondent has ignored calls for payments of dues to the workers. This, without any good reason or at all.
  11. On the basis of the evidence availed and the respective cases of the parties, I find this in favour of the claimant. She is entitled to all unpaid salaries owing to the grievants to date.
  12. The 2nd issue for determination is whether the Respondent should be ordered to remit statutory dues and other deductions, namely, Trade Union, NSSF, NHIF, PAYE among others. This is obvious. Statutory and other deductions from workers must always be remitted to the relevant institutions and authorities. This is in the interest of the workers, public welfare and good. The Respondent should therefore be ordered to remit these accordingly.
  13. The 3rd issue for determination is one on intimidation of the workers on grounds of this suit. This should never be. A conducive working environment and one that respects expedient labour relations is free of coercion and intimidation of workers. This should be the case here.



14. I am therefore inclined to allow the claim and order relief as follows;

- i. That the Respondent be and is hereby ordered to meet and pay claimant an amount of Kshs 4,901,192.00 being due salary to the grievants.
- ii. That the Respondent be and is hereby ordered to pay any continuing accrued salaries of the grievants to the claimant to date till payment in full.
- iii. That the Respondent be and is hereby restrained from intimidating the grievants at the work place whatsoever.
- iv. That the costs of the claim shall be borne by the Respondent.

**DATED AND DELIVERED AT NYERI THIS 31<sup>ST</sup> DAY OF OCTOBER 2022.**

**D K NJAGI MARETE**

**JUDGE**

**Appearances**

**1. Miss Macharia for the Claimant Union.**

**2. Mr Kirubi instructed by Kirubi, Mwangi Ben & Co Advocates for the Respondent.**

