



**Kenya Chemical & Allied Workers Union v Henkel Chemicals East Africa Limited
(Cause E6488 of 2020) [2022] KEELRC 13310 (KLR) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13310 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6488 OF 2020**

**J RIKA, J
NOVEMBER 30, 2022**

**BETWEEN
KENYA CHEMICAL & ALLIED WORKERS UNION CLAIMANT
AND
HENKEL CHEMICALS EAST AFRICA LIMITED RESPONDENT**

JUDGMENT

1. The Claimant Union filed its Statement of Claim on November 7, 2019.
2. It avers that Employees of the Respondent, who are its Members, were issued notices of partial redundancies by the Respondent, dated January 6, 2020.
3. The Claimant immediately reported the existence of a trade dispute to the Cabinet Secretary responsible for Labour and Social Protection, on January 13, 2020. The Claimant pleads that at the time of filing the Claim, the Cabinet Secretary had not appointed a Conciliator.
4. Parties meet at the Respondent's premises at Ruiru, where the Respondent sought 2 months to pay the Employees their dues.
5. The Claimant pleads through the Statement of Claim, that: -
 - a] Pending hearing and determination of this Application, the Honourable Court be pleased to compel the Respondent to sign the CBA for the period September 1, 2017 up to August 31, 2020, pay the severance payment and other benefits to the Employees declared redundant, and pay retirement benefits to those who have retired/resigned from employment, before the Director leaves the Country before the end of this year; and,
 - b] Cost of this Application be provided for.



6. The Statement of Claim is drawn as an Interlocutory Application. There was no Statement of Response filed by the Respondent, but the Respondent filed a Replying Affidavit, sworn by Arti Issar, Human Resource Manager on March 1, 2022.
7. Arti states that there is a pending dispute on CBA, between the Parties, which was reported to the Cabinet Secretary for Labour. A Conciliator has since been appointed through a letter from the Ministry, dated February 15, 2021. The Claim/Application herein was presented a month after the Claimant had reported the existence of the dispute to the Ministry. The Claim is in abuse of the process of the Court. The Respondent states that it is not right to have litigation and conciliation running parallel over the same dispute.
8. The Claimant filed Submissions dated April 1, 2022, while the Respondent's Submissions are dated March 1, 2021. Both Submissions address the substantive dispute.
9. The Claimant submits that over 30 Employees are entitled to terminal dues in accordance with the CBA. The benefits include: 3 months' salary in lieu of notice; salary for days worked; pro-rata leave; annual leave; gratuity/service benefit; traveling allowance; baggage allowance of Kshs 20,000 each; and maximum compensation for loss of employment.
10. The Respondent submits that the Court should not compel it, to execute the proposed CBA. The dispute has been submitted before the Ministry. The dispute should be resolved from there. There is no registered CBA, to be enforced by the Court. Parties are still disputing the CBA and have not signed any CBA. The Respondent prays the Court to dismiss the Claim, and give room for voluntary settlement.
11. The issues are whether there is a valid Claim before this Court; whether there is a valid CBA to be enforced by the Court; and whether the remedies pleaded are merited.

The Court Finds:

12. As suggested from the outset, there is no valid Statement of Claim filed by the Claimant.
13. The Statement of Claim on record, at page 3 pleads for interlocutory orders, "pending hearing and determination of this Application."
14. Page 4 pleads that, "the costs of this Application be met by the Respondents."
15. The Claim is in abuse of the process of the Court. The *Employment and Labour Relations Court [Procedure] Rules, 2016*, are clear on how Claims and Interlocutory Applications are to be made. Statements of Claim address final orders, while Interlocutory Applications address provisional orders.
16. The Claim is made on behalf of "over 30 Employees." Their details are not disclosed. It is alleged that some resigned, and others left through redundancy. There is no clarity on who left, who left on resignation, and who left on redundancy.
17. The remedies pleaded do not distinguish benefits applicable on redundancy and resignation. Remedies are pleaded across the board.
18. The CBA upon which the remedies are pleaded, has not been concluded by the Parties. It has not been agreed upon. It is not signed. It is not registered with the Court. It has no legal or contractual validity.
19. The Claimant presented a trade dispute to the Ministry of Labour concerning the same issues. Barely a month later, even before the Ministry had designated a Conciliator to look into the dispute, the Claimant filed this Claim.



20. In doing this, the Claimant ignored Rule 5 of the *ECRLRC [Procedure] Rules, 2016*, which regulate Statements of Claim, issued pursuant to the *Labour Relations Act, 2007*.
21. The Claim is flawed in procedure and substance. It is beyond redemption through amendment.

It Is Ordered:

- a. The Claim is declined.
- b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30TH DAY OF NOVEMBER 2022.

JAMES RIKA

JUDGE

