



Kenya Engineering Workers Union v Farm Engineering Industries Ltd (Cause 47 of 2019) [2022] KEELRC 13520 (KLR) (14 December 2022) (Ruling)

Neutral citation: [2022] KEELRC 13520 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 47 OF 2019
S RADIDO, J
DECEMBER 14, 2022**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
FARM ENGINEERING INDUSTRIES LTD RESPONDENT**

RULING

1. On 28 September 2022, the Court delivered a judgment and awarded the Grievant compensation and pay in lieu of notice. The Court declined to award other heads of claim sought by the Union.
2. The Union was not happy with the judgment and on 26 October 2022, it filed a Motion seeking orders:
 - (a) ...
 - (b) That the honourable court deem fit to review her judgment delivered on September 28, 2022.
 - (c) That the honourable court deem fit and grant orders as per the applicant/Claimant prayers as per her Memorandum of Claim dated 2nd day of December 2021 and filed in Court on December 3, 2021, prayer 4.3(a),(b),(d) & (e).
 - (d) That the costs of this application be met by the respondent herein.
 - (e) That any other prayer the honourable court may deem fit to grant.
3. The grounds in support of the application were briefly that the Court had not considered the prayers for notice pay, service gratuity, accrued leave and days worked and that the Court had not considered the provisions of clauses 21(b) and 23 of the collective bargaining agreement between the parties.
4. The Union filed its submissions on 22 November 2022.
5. The Respondent filed a replying affidavit in opposition to the Motion on 7 December 2022.



6. The Court has considered the Motion, affidavits, and submissions.

Notice Pay

7. Clause 21 of the collective bargaining agreement provides for 2 months' pay in lieu of notice for employees who have served for over 5 years.
8. The Respondent admitted that the Grievant had been employed in 1998. The Grievant had therefore served for more than 5 years.
9. The Court fell into a reviewable error when it awarded the equivalent of 1 month pay in lieu of notice instead of 2 months.

Service Gratuity

10. The Court declined to award the Grievant service gratuity on account of the fact that he was contributing to the National Social Security Fund.
11. The Court has looked at the collective bargaining agreement and more so clause 23.
12. The clause provides:
 - 23 "Retirement benefits
 - (a) An employee who retires from the company under medical grounds, age ground or an employee who is affected with normal termination in accordance with clause 21 of the CBA shall be paid a gratuity at the rate of 19 days per each year/month of service.
 - (b) An employee who dies while in employment shall be treated the same and in addition the company shall provide a coffin and transporting the body up to the burial place."
13. The Court fell into a reviewable error in not considering the clause when it found that the termination of the Grievant's employment was unfair.

Accrued leave/earned wages

14. The Union had prayed for Kshs 25,728/- on account of the Grievant's accrued leave and Kshs 6,432/- as earned wages
15. The Court declined to award the claims because the Union had not placed an evidential foundation for the heads of the claim(s).
16. The Court is of the view that these parts of the decision are not reviewable. The option available to the Union is to appeal.

Conclusion and Orders

17. The Motion succeeds to the extent that the Court reviews the judgment by awarding:
 - (a) Pay in lieu of notice Kshs 51,446/-
 - (b) Service gratuity Kshs 360,122/-
18. The Deputy Registrar is directed to amend the decree accordingly.



19. Costs of the application in the cause.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS
14TH DAY OF DECEMBER 2022.**

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr. Makale, industrial Relations Officer

For Respondent M.M. Gitonga & Co. Advocates

Court Assistant Chrispo Aura

