



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT NAIROBI**  
**CAUSE NO. 695(N) OF 2009**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 29<sup>th</sup> June, 2017)**

**KENYA CHEMICAL &  
ALLIED WORKERS UNION .....CLAIMANT**

**VERSUS**

**KENYA TANNING EXTRACTS LIMITED .....RESPONDENT**

**JUDGMENT**

1. The Claim was filed by the Claimant on 12.11.2009 against the Respondent as a result on a dispute arising from:

***1. Refusal to negotiate on Collective Bargaining Agreement.***

***2. Refusal to pay gratuity/service benefits.***

***3. Refusal to pay redundancy payment.***

2. The Claimant state that they had been enjoying cordial relationship with the Respondent beginning November 1998 until 7<sup>th</sup> March, 2005, when the relationship became sour after the signing of the Collective Bargaining Agreement.

3. The Claimant allege that after the CBA was concluded and signed, the Respondents embarked on declaring workers redundant without paying them what was due to them and without adhering to proper procedure.

4. They further state that this caused the parties to be in dispute on redundancy pay in cause No. 128 of 2005 whose award the Respondent have not honoured to date.

5. It is the Claimant's contention that the Respondent planned to close the factory without paying its workers. On 23.12.2008 they wrote to the workers advising them that all workers were to proceed on leave from 24.12.2008 to 31.01.2009, or until there were sufficient materials for production which letter was never copied to the Claimant and neither were the shop stewards aware of this decision by the Respondent.

6. They further allege that on 19.3.2009 a meeting was held with the Respondents who gave their tabulations with regards to the worker's entitlements which calculations were not acceptable to the Claimant union as it was only carrying entitlements on redundancy but did not include Gratuity which is paid in addition to such redundancy payment.

7. They state that they communicated the reasons for rejecting the Respondent's calculations and it was agreed that the Respondent would include the claimed benefits in their calculations which was never done.

8. That on 10.6.2009 the Respondent wrote to the Claimant's members requiring them to surrender their houses and move out of the Respondent's compound by the end of June, 2009. This was not acceptable to the Claimant as the workers had not been paid their entitlements and this was communicated to the Respondent by a letter dated 23.6.2009.

9. The Claimant contends that they reported the dispute to the Minister on 1.7.2009 who appointed a Conciliator. It is alleged that the said Conciliator held several meetings and eventually wrote to the Respondent seeking to know the length of time it would take to dispose of its assets and pay the workers but the Respondent never replied.

10. They state that this led the said Conciliator to write to the Chief Industrial Relations Officer on 19.10.2009 indicating that conciliation had failed giving the Claimant the right to proceed with adjudication.

11. The Respondent filed a Memorandum of Reply wherein they deny breaching any terms of the CBA existing between them and the Claimant and has been keen to and committed to having this matter settled from the onset.

12. They state that they paid the 25 unionisable employees their entitlement under the limb of notice, accrued leave and salary increment arrears with the only remaining item being severance pay of Kshs. 3,698,592/=.

13. Thereafter the Respondent approached the 25 unionisable employees and made a concrete offer in respect of payment of their redundancy pay which the employees adamantly declined to accept save for nine employees who took up the offer.

14. The Respondent aver that the 16 employees who refused to take the redundancy pay were insisting that they should be paid redundancy and service benefits which in the Respondent's opinion would amount to double payment.

15. They urge the Court to weigh their ability to pay within the totality of all the circumstances of the case as the current situation was brought about by circumstances beyond their control. Further that the Respondent closed its operations as evidenced by its accounts for the period ended 30.6.2012 and neither does it have any tangible assets that can be liquidated to satisfy the Grievants' claim.

16. It is the Respondent's contention that at the moment they can only secure Shs. 2,260,534/= to settle the redundancy dues for the remaining 16 Grievants which they pray to be allowed to be paid in 10 equal monthly installments till payment in full. Further that the Claim should be disallowed as it was filed prematurely as negotiations were still ongoing.

17. On 15.5.2012 the parties reached a consent in the following terms:

**1. The Union Members terminal dues will be paid on or before 30.6.2012.**

**2. The Parties representatives to compute the dues of each Grievant prior to the date of payment.**

**3. Mention on 10.7.2012 at 10.00 am.**

18. Matter came up severally to confirm payment of the agreed sums but that never took off and subsequently the matter was set up for hearing in which the Respondent despite being served with the hearing notice did not show up and the matter proceeded *ex parte*.

19. At the hearing, one Mr. Mueke led evidence on behalf of the Claimant stating their claim of 12.11.2009 is not opposed. That a consent order recorded in Court requiring the parties to negotiate was precipitated by the letter filed in Court dated 30<sup>th</sup> November, 2011, wherein the Respondent agreed to pay the Grievants' terminal dues by the end of June, 2012. He stated that the payments due are tabulated

in their Appendix 6(a) which summarizes the sums due as package pay of 480,000/=, Gratuity pay of 4,328,653 and redundancy pay of 4,331,333/=. The Claimant admitted that notice pay was settled and that 9 Grievants were paid. They state that balance due is Shs. 8,177,003/= which is what they claim.

20. The matter later on came up for mention where the Respondent was represented by the firm of Anthony Gikaria. He informed the Court that the Respondent had immigrated to Canada and that they were in the process of compiling the list of 13 ex-employees who have been paid contrary to the 9 Grievants the Claimant alleges were paid. He further indicated that the Respondent was willing to settle the claim. The Court ordered the parties to sit and agree what aspects of the Claim require the Court's intervention.

21. To date there has been no consent filed in Court and the Respondent did not file final submissions in the matter.

22. Having considered the evidence presented before this Court, the Court considers the issue for determination to be payment of redundancy dues and whether the Claimants are entitled to payment of both service pay and redundancy pay.

23. The guiding principle on the latter issue would be the Collective Bargaining Agreement (CBA) signed between Respondent and Claimant. Clause 20 and Clause 21 of the Parties CBA for the period from 1<sup>st</sup> November 2000 and thereafter until amended mutually; Part 7(e) state as follows:

***“Provident fund and other retirement benefits, if any are in no way affected by these arrangements”.***

24. In fact the whole of Clause 21(f) states as follows:

***“Entitlement of redundant employees In the event of an employee being declared redundant, he shall be entitled to:***

***a) The normal notice or pay in lieu of notice as defined in this agreement.***

***b) Payment of wages, overtime and any other remuneration which may be due to him calculated upto the date on which he ceases work.***

***c) Pro-rata leave and leave allowance entitlement in accordance with the Clause of this agreement.***

***d) Employees with service of less than 8 years shall be entitled to severance pay of half month's pay for each completed year and shall be entitled to severance pay of one month for each completed year of service.***

***e) Provident Fund and other retirement benefits, if any are in no way affected by these arrangements”.***

***(emphasis if mine).***

25. My reading of (e) above is proof that employees declared redundant were entitled to payment of the redundancy package in addition to payment of their retirement benefits if any. These retirement benefits are benefits payable in the event of a normal retirement or termination which in this case includes payment of gratuity. It is therefore my finding that in calculating what the Claimants are entitled to, gratuity should be included.

26. The Claimants herein have admitted that 9 of the Grievants were paid their redundancy dues but not gratuity. The other 15 were not paid any redundancy dues nor gratuity. They have filed their submissions and tabulated the list of employees indicating what is due to each.

27. I will find the tabulation valid and find in favour of the Grievants in terms of the tabulation less the baggage allowance which is not supported by documents envisaged under Clause 23 of the CBA. The payments due are therefore as follows:

<b>NO.</b>	<b>NAME</b>	<b>SERVICE/GRATUITY ENTITLEMENT KSHS.</b>	<b>REDUNDANCY</b>	<b>TOTAL AMOUNT LESS</b>
1.	Peter Njuguna	104,600	166,488	271,088
2.	Daniel Eshiwani	265,231	253,296	518,527
3.	Isaac Kiambati	187,872	179,418	267,290
4.	Francis M. Ngugi	221,026	211,080	432,106
5.	Peter N. Muchoki	221,026	211,080	432,106
6.	James Nyamwaro	99,462	158,310	257,772
7.	John Maina Ndungu	170,000	162,350	332,350
8.	Njoroge Kinyanjui	72,000	114,600	186,600
9.	Edward G. Njihia	92,831	147,756	240,587
10.	Ronald B. Midungu	56,790	90,390	147,180
11.	Ezekiel Msavili	187,872	168,864	356,736
12.	Joseph Wainaina	170,000	162,350	332,350
13.	Norman Mcharia	221,086	221,080	432,166
14.	Martin C. Matu	72,000	114,600	186,600
15.	Maundu Mulu	211,826	202,164	413,990

**Total outstanding claim for the 15 Grievants is 4,907,448**

NO.	NAME	Total Claimed	amount	Amount Paid	Date paid	Cheque No.	Amount due & owed
16.	David N. Ng'ang'a	365,685		136,620	8.4.2011	410359	229,065
17.	James N. Muiruri	352,350		142,885	8.4.2011	410361	209,465
18.	Samuel J. Ng'ang'a	409,637		155,548	30.5.2011	410377	254,089
19.	Eliud Mungai	458,198		174,513	30.5.2011	410381	283,685
20.	Francis Muiruri	452,016		94,494	10.3.2011	410333	355,612
21.	David M. Mathenge	716,322		241,322	10.2.2011	410308	475,000
22.	Peter Macharia	291,155		136,712	31.5.2011	410380	154,443
23.	Michael K. Nyoike	271,682		122,289	30.5.2011	410378	149,393
24.	Julius P. Kiiru Kibe	560,995		208,675	5.4.2011	410360	352,320
	<b>TOTAL</b>	<b>3,878,130</b>		<b>1,413,058</b>			<b>2,465,072</b>

**Total due is Kshs.7,372,520/=**

28. Respondents will pay costs of this claim.

Read in open Court this 29<sup>th</sup> day of June 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Mweke for Claimant - Present

No appearance for Respondent