

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. E327 OF 2023

KENYA CHEMICAL WORKERS UNION.....CLAIMANT

-VS-

MACS PHARMACEUTICALS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Kenya Chemical Workers Union, on account of alleged non-payment of salaries to 46 employees of the Respondent. The claim is contained in a Memorandum of Claim dated 13th April 2023. In its defence, the Respondent filed a Response dated 22nd January 2024.
2. The matter went to full trial where the Claimant called Recho Kerubo and Susan Wanjiku Kamau. The Respondent called Meshack Obonyo. Thereafter, the parties filed written submissions.

The Claimant's Case

3. The Claimant accuses the Respondent of paying salaries selectively, by paying half salary to some employees while paying others in full. Other employees are said not to have been paid any salary at all.
4. The Claimant states that the parties in the dispute had agreed that salaries for February 2020 would be settled before 17th June 2020, an agreement the Respondent did not honour.

5. The Claimant therefore claims outstanding salaries on behalf of 46 Grievants for 2020, 2021, 2022 and 2023 as listed in the Memorandum of Claim.

The Respondent's Case

6. In its Response dated 22nd January 2024, the Respondent denies the Claimant's claim and states that some employees were placed on unpaid leave due to the Company's operational status and regulatory directives.
7. The Respondent avers that its operations were halted on 1st March 2020, pursuant to communication from the Pharmacy and Poisons Board dated 26th February 2020. In compliance with this communication, the Respondent sent employees on unpaid leave effective 13th May 2020. According to the Respondent, all unionised employees were on unpaid leave from 13th May 2020 to 30th June 2021.
8. The Respondent claims that it remained non-operational until 30th June 2021, when the Pharmacy and Poisons Board lifted its suspension notice, allowing for completion of validation processes and resumption of full scale production. A further suspension of operations is said to have taken place on 29th August 2023.
9. The Respondent refers to a meeting with the Union on 19th May 2020 convened to discuss the way forward. A further meeting was held on 11th June 2020, after which the matter was escalated to the Chief Industrial Relations Officer by letter dated 17th June 2020.

10. The Respondent contests the accuracy of the figures as tabulated by the Claimant in the Memorandum of Claim and calls for strict proof of the claimed indebtedness.
11. The Respondent denies the allegation that it has refused to pay the Claimant's members accrued salaries and avers that regular updates regarding settlement of outstanding salaries have been given to the Union.
12. The Respondent goes on to state that on 6th October 2022, the Union was formally notified of the Company's intention to terminate the employment of employees who had not been reinstated, citing redundancy. The Respondent claims making a proposal to settle the dues owed to the terminated employees by monthly instalments of Kshs. 10,000 each.
13. According to the Respondent, its total indebtedness to the Claimant's members stands at Kshs. 2,446,495 being unpaid salaries for March, April, May, September and October 2020. The Respondent asserts that there are no salary arrears outstanding for period between 1st June 2021 and March 2023.

Findings and Determination

14. The Claimant's claim is for salary arrears allegedly owed to 46 of its members. This claim falls within the category of special damages. This remedy was defined by the Court of Appeal in *Jogoo Kimakia Bus Services v Electrocom International Ltd [1992] KLR 177* in the following terms:

“Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”

15. In the case now before me, all the Claimant has done is to list salary figures without disclosing the primary documents from which these figures have been drawn. Further, no evidence was led to support these figures. The Claimant’s claim as presented was therefore not proved.

16. However, in its Response dated 22nd January 2024, the Respondent admits that it owes the Claimant’s members the sum of **Kshs. 2,446,495** in salary arrears. In the circumstances, I will enter judgment on admission in the said sum.

17. This amount will attract interest at court rates from the date of judgment until payment in full.

18. Each party will bear their own costs.

19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF NOVEMBER 2024

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JUDGE

Appearance:

Mr. Gwako (Union Representative) for the Claimant

Mr. Bruno for the Respondent

ORIGINAL