Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Board of Management Ebusakami Girls High School (CBA E001 of 2024) [2025] KEELRC 2540 (KLR) (22 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2540 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA

CBA E001 OF 2024

DN NDERITU, J

SEPTEMBER 22, 2025

(FORMERLY ELRC NAIROBI CBA E258 OF 2023)

BETWEEN

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND HOSPITAL WORKERS ..... CLAIMANT

AND

BOARD OF MANAGEMENT EBUSAKAMI GIRLS HIGH SCHOOL ..... RESPONDENT

JUDGMENT

I. Introduction

1. On 23rd June 2023 the parties herein executed a collective bargaining agreement (CBA). For the respondent the CBA was executed and signed by Dr Deborah Amukowa, the chair, and Grace Mudaki, the secretary and principal of the school. For the applicant, Albert Njeru, the secretary general, and Thomas Mboya, the branch secretary, signed. Ernest Otieno, a shop-steward, signed for the workers.

2. As it is the procedure the CBA was submitted by the claimant to the Principal Secretary (PS), Ministry of Labour and Social Protection, on 28th August 2023 for onward transmission to the court for registration. The PS forwarded the CBA to the Principal Judge of the court vide a letter dated 20th September 2023.

3. The hearing on registration was set for 2nd November 2023 and the respondent was notified accordingly and appointed Mr. Stafford Nyauma, a state counsel, to act for it while Mr. Kamuye acted for the claimant.

4. The respondent objected to the registration and in a ruling delivered on 7th February 2024 by Dr Gakeri J the parties were granted 45 days to iron-out the contentious issues and return to court for registration of the CBA.

5. On 21st May 2024 the matter was transferred from Nairobi to Kakamega for the hearing and disposal.

6. By a consent recorded on 11th June 2024 the matter was referred for court annexed mediation. However, the mediation did not yield an agreement and disposal of all the contested issues and it was thus agreed that the issues in dispute be determined by the court.

7. On 19th December 2025 it was by consent directed that the matter be canvassed by way of written submissions. Mr. Kamuye for the claimant filed submissions dated 10th January 2025 while Mr. Tarus holding brief for Mr. Nyauma for the respondent filed submissions dated 25th February 2025.

II. The Submissions

8. For the claimant, it is submitted that the parties voluntarily signed a recognition agreement dated 13th May 1999 and thereafter negotiated, agreed, and signed a CBA dated 19th July 2021. This CBA was subsequently registered with the court on 24th September 2021 under certificate of registration No. E141 of 2021.

9. It was a term of the CBA that it was to remain in force from 1st January 2020 to 31st December 2021 or until such a time as the parties negotiated and agreed to amend the same or negotiated, agreed, and signed another CBA altogether.

10. It is was further submitted that on 23rd June 2023 the parties met, negotiated, agreed, and signed a new CBA for registration by the court.

11. Subsequently, Mrs. Grace Mudaki, the principal of the school and secretary to the respondent who had signed as such, retired and was replaced by Mrs. Ruth Mbaluka. The principal now objected to the already negotiated, agreed, and signed CBA terming the same as untenable.

12. It is submitted that after various meetings aimed at unlocking the stalemate and even reference of the matter for court annexed mediation, the stalemate was unresolved and thus the decision by the parties to have the issues resolved through a determination by the court.

13. It is submitted that the CBA of 23rd July 2023 was voluntarily and freely executed and signed and that it is the new principal who unduly and unlawfully interfered with the process for no good cause.

14. The claimant is seeking for the following orders –

    1. That: The reviewed CBA which was voluntarily signed on 23/7/2023 by all parties be adopted by this court to allow for registration. In the alternative,

    2. That: The honourable court orders for progressive negotiation of the existing CBA registered by your bro. Justice James Rika

    3. That: The respondent stops intimidation, coercion and intimidation of the claimants members on the basis of this dispute.

    4. That: The respondent bears costs considering the fact that the respondent has been grossly inconvenienced through the abrupt twist of events. It goes without saying that the respondents actions have an ulterior motive of disorganizing the claimants membership.

    5. That: The honourable court grants any other relief deemed fit.

15. For the respondent, it is submitted that the signed CBA was not ratified by the full Board of Management (BOM) after the executive of the board had negotiated, agreed, and signed the same. It is on that basis that Dr. Gakeri J in the ruling alluded to above allowed the parties 45 days to engage and resolve the impasse.

16. It is submitted that upon the parties engaging, 13 disputed clauses were resolved and 13 others were unresolved out of the total 45 clauses in the CBA. Further, it is submitted that out of the 13 contested clauses 3 clauses were resolved on mediation and 9 clauses referred back to court for determination.

17. Counsel for the respondent submitted on the contested clauses as follows. On annual increment under clause 41 it is submitted that the proposed 5% increment is not tenable as the revenue from fees collected has been going down for the period from 2021 to 2024; prices of essential commodities have gone up yet capitation by the government has remained the same; and, the number of students has increased without commensurate increment in capitation, among many other unfavourable economic circumstances.

18. On clause 5 on probation, it is argued that the proposed period of three months is too short. It is proposed that the said period be enlarged to six months as that is the standard period.

19. On gratuity in clause 30, it is submitted that since the respondent remits to the National Social Security Fund (NSSF) funds for pension deducted from the employees, it is argued that the respondent should not be condemned at the same time to pay gratuity as that amounts to double-payment and it is oppressive to the respondent.

20. On clause 45 on commencement date, it is proposed that the effective date be the date of signing of the CBA and that the same should not be applied retrospectively.

21. Clause 25 is on medical cover. It is submitted that in view of the dwindling revenue for the reasons stated above, the respondent shall not be able to pay beyond the current medical allowance as per the payroll. However, the payroll rates are neither stated nor disclosed.

22. On the period of interdiction under clause 11, it is submitted that the same should not exceed 6 months and that reinstatement should be conditional.

23. In conclusion, it is submitted that the CBA signed on 19th July 2021 should be retained as the respondent shall not be able to shoulder the enhanced financial obligations under the proposed new CBA as it is impossible and untenable to implement the same due to limited resources. It is submitted that if the new CBA is imposed upon the respondent the school shall close under the weight of the heavy financial burden, against public interest and policy.

24. In any event, it is further submitted, the current salaries paid by the respondent are within the gazetted minimum wages. It is urged that the CBA signed on 23rd June 2023 was objected to by the full board of the respondent and as such the same is invalid (however, the court notes that no evidence of that disapproval by the full board was availed in court).

25. On costs, it is submitted that the court should order each party to meet own costs of these proceedings.

III. Evidence

26. The facts of this matter are clear and largely uncontested. The parties herein have a recognition agreement and on 19th June 2021 entered into a duly negotiated CBA. The said CBA was subsequently registered with the court (Rika J) as per the law and allocated reference RCA No. 102 of

2021. The CBA was to remain in force until both parties agreed on amendments and or signed another CBA.

27. On 23rd June 2023 the parties negotiated, agreed, and executed a fresh CBA and the same was submitted to court for registration. However, the respondent objected to the registration of the new CBA on the basis that while the same was duly executed by the executive committee of the BOM the same had not been ratified by the full BOM. However, the claimant read malice in that proposition and countered that it is the new principal who had issues with the CBA and not the BOM.

28. Nonetheless, the CBA was subjected to the process alluded to in the introductory part of this judgment and as enumerated in the submissions by and or for both the parties. That is how the dispute landed in court.

IV. Issues for Determination

29. The court has read the materials placed before it and the submissions by both sides, as summarized in the foregoing parts of this judgment. The issues for determination by the court are easy to discern. The court has been called upon to determine and rule on the nine contested clauses in the new CBA as per the duly signed list filled in court.

30. Clause 5 is about the probationary period. While the claimant insists on having employees on probation for a period of three months, the respondent posits that six months is the standard period and prays the court to find and hold so in that regard.

31. Section of the *Employment Act* (the Act) defines "probationary contract" as – a contract of employment which is of not more than twelve months duration or part thereof, is in writing and expressly states that it is for a probationary period. From this definition it is clear that a probationary contract or period may run from one day to a maximum of 12 months. The previous registered CBA provided for a maximum probationary period of three months. Other than stating that six months is the standard practice, the respondent has not given any logical reason why the period should be enhanced from three to six months.

32. In any event, Section 42(2) of the Act is clear that, unless by consent, probationary period shall not exceed six months and as such three months is a reasonable probationary period and should be fair to both sides. If that period has applied for the last so many years, it is not broken and there is nothing to fix.

33. For the sake of stability and harmony in the relationship between the parties the court orders and directs that the parties stick to the three months probationary period as agreed in the earlier registered CBA.

34. Clause 8 on warning procedures is also contested. The court notes that this clause is a reproduction of the contents of the same clause in the earlier registered CBA. There is no reason(s) whatsoever from the respondent as to why it is now opposed to the inclusion of the clause. The objection is hollow, illogical, and unreasonable. The same is dismissed and shall be retained as drafted in the new CBA.

35. Clause 11 on interdiction procedure is also contested. The proposed new CBA reads "Interdiction period shall not exceed three months, unless a police case, otherwise the employee shall be reinstated unconditionally." That was the same provision in the outgoing registered CBA. The respondent in the submissions proposes that interdiction period shall not exceed six months and that reinstatement to work shall be conditional.

36. Interdiction is an interim disciplinary procedure intended to give an employer time to investigate alleged misconduct and take appropriate action. It is not every investigation that must end in

termination or dismissal. In any event, the investigation may vindicate the subject employee. In reinstating an employee, an employer may as well impose reasonable and lawful conditions upon an employee who may have been found guilty of misconduct but whom the employer decides to retain.

37. Either way, the investigation of misconduct ought to be fast-tracked to avoid keeping an employee in the cold for too long. However, the conditions to be imposed upon reinstatement should be fair and reasonable based on the outcome of the investigation, the nature of the misconduct, and such other relevant factors. Three months is a reasonable time for an employer to conduct and conclude such investigation and decide on the action to be taken, unless the matter involves factors beyond the respondent such as investigation by the police.

38. For fair, smooth, and balanced industrial relations between the parties herein, a period of three months is a fair and reasonable period for investigation to be conducted and concluded as well as deciding on the conditions to be imposed upon reinstatement. The clause should thus read to the effect that interdiction shall not exceed a period of three months and in case of a verdict of innocence the reinstatement shall be unconditional. Where an employee is found culpable of misconduct the reinstatement may be subject to fair, logical, reasonable, and lawful conditions.

39. Clause 16 on enhancing leave allowance is contested. The contested new CBA provides as follows in this regard –

    (a) An employee proceeding on annual leave shall be granted a leave allowance in tandem with his/her job group as follows: -

        Job group A, B, C & D - Kshs. 3,000

        Job group E & F - Kshs. 4,000

        Job group G, H & K - Kshs. 5,000

    (b) The travelling allowance shall neither be granted to the wife nor husband or any dependants.

40. The outgoing CBA provided as follows –

    a. An employee proceeding on an annual leave shall be granted a leave allowance in tandem with his/her job group as follows:

        A, B, C - Kshs. 2,500,

        E and F - Kshs. 3,500,

        G, H, - Kshs. 4,000,

        J and K - Kshs. 4,500

    b. The travelling allowance shall be granted to the wife, husband or any dependents.

41. Considering the passage of time between the time that the negotiations of this new CBA commenced and the time when this judgment is delivered and factors such as inflation and cost of living, the court takes the view that the request by the claimant is neither exaggerated, unfair, nor unreasonable. Other than the general argument that the revenue resources and capitation is not adequate, without specifics and particulars, the respondent has not provided logical and concrete reasons why it deems the proposed rates to be too high or inconsiderate. There is no reason(s) given by the respondent as to why the increment should only go up by meagre Kshs250/=.

42. The court finds and holds that the rates proposed in the new CBA are fair and reasonable and are thus upheld.

43. Clause 25 on medical allowance is contested with the respondent proposing that the same be maintained as per the payroll. The outgoing CBA provided for medical allowance of Kshs500/= across board while the new CBA provides as follows –

> Employees who are in service shall receive a medical allowance as follows: -
>
> Job group A, B, C & D- Kshs. 1,000
>
> Job group E & F - Kshs. 1,250
>
> Job group G & H - Kshs. 1,500

44. The respondent has not availed the rates in the payroll and hence the presumption is that the same is as per the outgoing CBA at the flat rate of Kshs500/= per person per month.

45. Since the outgoing CBA had proposed for a flat rate across board, it shall make sense to have a flat rate apply even in the new CBA. Considering the harsh economic reality, the court considers a flat rate of Kshs1,000/= to be fair and reasonable considering passage of time and inflation. This position is also intended to maintain harmonious industrial relation between the parties.

46. Clause 27 on work uniform is contested. The respondent proposes to provide one pair of uniform and protective gears per annum while the claimant is seeking for two pairs. The outgoing CBA provided for two pairs. The court finds and holds that the respondent is unfair and unreasonable in raising this objection and the same has no basis or merits. The respondent shall provide for two pairs of uniform to the employees per annum.

47. Clause 30 on "service gratuity" is also contested. The respondent takes the view that as long as it makes remittances to NSSF no other gratuity should be payable to the employees. The claimant is of the opinion that gratuity should be payable at the rate of one month for every year completed. This was the agreed position in the outgoing registered CBA.

48. It is important to make two quick points here. Service pay is ordinarily paid where no gratuity is due and payable. It is paid at the end of a term-contract as provided for in the contract. Gratuity on the other hand is a voluntary payment as a way of an employer thanking an employee for service offered. Gratuity may be based on a clause in the contract or on voluntary will of an employer. For this reason, the term "service gratuity" is misleading. It can only be either service pay or gratuity. Since the employees, members of the claimant, are engaged on permanent and pensionable terms, the parties ought to have referred to the same as gratuity and not service pay, unless for those who may serve on term-contracts.

49. The outgoing CBA provided for payment of gratuity at the rate of one month for each year worked. It is important to note that what is provided for in the Act is the bare minimum terms of employment and parties are free to indeed engage on better terms than those minimum terms. There is thus nothing wrong with the respondent making remittances to NSSF and at the same time appreciating employees by way of an agreed gratuity.

50. Other than the general allegation and argument about limited revenue and capitation, and no audited accounts have been availed, there are no reasons advanced by the respondent as to why the parties should altogether abandon the position that obtained in the outgoing CBA and abolish gratuity altogether. That is a retrogressive proposal that is not commensurate with fair labour practices under Article 41 of *the Constitution*.

51. The court thus finds and holds that gratuity shall be payable to departing employees at the rate of one month's salary for each year served.

52. Clause 41 is contested and the respondent proposes salary increment at the rate of 2% as opposed to the proposed 5%. The respondent argues that there shall be no Form one students in 2026 and hence the revenue from fees collected from students shall go down. The general wage increment was proposed to take effect from 1st July 2023 for all employees who were in service by 30th June 2023. It was proposed that thereafter there should be an annual increment of 2%. Similar provisions were contained in the outgoing CBA.

53. For the sake of industrial harmony and the care needed not to overwhelm the respondent, a public school, the court finds and holds that it is fair and reasonable that any increment be cognizant of the fact of contemporary hard economic hardship in all public institutions. In view of the prolonged negotiations and settlement period taken in having this matter concluded, the court orders and directs that upon signing of the new CBA there be an immediate increment of 2% for all employees and thereafter there shall be an increment of 2% per annum.

54. Clause 45 is on the effective date for the new CBA to come to force. The respondent opines that the new CBA should come into force upon execution while the claimant submits that the same should be enforced retroactively from 1st July 2023.

55. It is unfortunate that the process of finalizing the new CBA has taken too much time. It is hoped that the new CBA shall provide a new beginning and better industrial relationship between the parties herein. For this reason, the court rules and orders that the new CBA shall come into force and operation upon signing and remain in force until the same is mutually amended and or a new CBA is negotiated, agreed, and signed.

56. The court wishes to make it very clear that it has dealt with the issues submitted for determination as per the duly signed reference by the parties. I state this because in the submissions the parties appear to have either left out or added some clauses. The court has dealt with the nine clauses referenced to it as per the foregoing paragraphs and it is hoped that this dispute shall, and is hereby, now settled as per this judgment.

V. Orders

57. The court makes the following orders –

    a. For clause 5 the probationary period shall be three months.

    b. The warning procedures shall be as provided for in clause 8 of the proposed new CBA.

    c. The period of interdiction shall not exceed three months unless the investigation into alleged misconduct involves police.

    d. The leave allowance shall be as per clause 16 of the proposed new CBA.

    e. On clause 25, a standard medical allowance of Kshs1,000/= shall be payable and apply across board.

    f. On clause 27, employees shall be supplied with two pair of uniform and other necessary items per annum as provided for in the outgoing CBA.

    g. On clause 30, gratuity shall be payable at the rate of one month's salary for each year served as provided for in the outgoing CBA.

    h. On clause 45, there shall be an immediate 2% salary increment upon execution of the new CBA for all employees in service and thereafter a 2% increment per annum.

i. On clause 45, the effective date of the new CBA shall be upon the signing and shall remain force until the same is mutually amended or a new CBA negotiated, agreed, and signed.

j. The parties SHALL include the above clauses to the new CBA and execute the same within 30 days of this judgment failure to which the new CBA shall be deemed to come into force upon expiry of that period.

k. To facilitate (j) above, the claimant shall within 14 days of this judgment draft and forward to the respondents copies of the new CBA for execution within the period stated above.

l. Each party shall meet own costs for these proceedings.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 22ND DAY OF SEPTEMBER, 2025.

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DAVID NDERITU

JUDGE