



**Kenya Union of Commercial, Food and Allied Workers v Mantrack Limited
(Cause E196 of 2024) [2024] KEELRC 2166 (KLR) (30 August 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2166 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E196 OF 2024**

**J RIKA, J
AUGUST 30, 2024**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
MANTRACK LIMITED RESPONDENT

RULING

1. The Claimant Union moves the Court, through the Application dated March 13, 2024, for grant the following two main orders: -
 - a. Pending hearing and determination of the Claim, the Respondent is ordered to forward its counter-proposals to the Claimant, and initiate the negotiation process of the 2020-2022 Collective Bargaining Agreement.
 - b. The Parties are directed to negotiate CBA within 60 days from the date of the order.
2. The Application is based on the Affidavit of Claimant’s Deputy General Secretary, Andrew Kinyua, sworn on March 13, 2024.
3. Kinyua explains that the Parties have a Recognition Agreement and have negotiated and concluded several CBAs in the past. The Claimant forwarded its proposal for the 2020-2022 CBA, which the Respondent ignored.
4. The dispute was reported to the Ministry of Labour. The Conciliator was not able to resolve the dispute, and issued a certificate of unresolved dispute, on 28th November 2023.
5. The Respondent relies on Grounds of Opposition, dated June 5, 2024. Its position is that there is no Recognition Agreement between the Parties. The CBAs concluded in the past were negotiated and



executed through the umbrella Employer, Unilever. The Respondent is not bound to negotiate with the Claimant.

6. Parties agreed to have the Application considered and determined, on the strength of their Pleadings and Submissions. They confirmed filing and exchange of Submissions, at the last appearance before the Court, on July 11, 2024.

The Court Finds: -

7. The orders sought by the Claimant are not suited for grant through an Interlocutory Application.
8. It is disputed that the Parties have a Recognition Agreement, which would enable them to negotiate, conclude and execute a valid CBA.
9. The status of the Recognition Agreement can only be determined through the trial of facts, not through an Affidavit.
10. The Conciliator notes in the Certificate of Unresolved Trade Dispute dated November 28, 2023, that Claimant union failed to confirm receipt of notification of its members' resignation from the Claimant Union. The Conciliator gave the Claimant time, but the Claimant did not revert to the Conciliator, to confirm whether it has any members working for the Respondent. The issue of the Claimant's right to represent Employees was therefore, left dangling in the wind.
11. The orders sought cannot issue, while the issue is still dandling. CBAs are negotiated and executed by a Trade Union, on behalf of an existing and identifiable collective bargaining unit.
12. The capacity of the Claimant Union to enter into collective negotiations with the Respondent, and to conclude and execute a valid CBA, can only be determined, on hearing the Parties' evidence.

It is ordered: -

- a. The Application dated 13th March 2024 filed by the Claimant is declined.
- b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE COURT ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30TH DAY OF AUGUST 2024.

JAMES RIKA

JUDGE

