



**Kenya Engineering Workers Union v M/S Kenya Marine Contractors (EPZ) Limited  
(Cause E047 of 2023) [2025] KEELRC 2990 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2990 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E047 OF 2023  
M MBARÚ, J  
OCTOBER 30, 2025**

**BETWEEN  
KENYA ENGINEERING WORKERS UNION ..... CLAIMANT  
AND  
M/S KENYA MARINE CONTRACTORS (EPZ) LIMITED ..... RESPONDENT**

**JUDGMENT**

**Background**

1. The conduct of this suit has not been smooth. Parties attended on 24 October 2023 for hearing directions. The respondent opted to address its objections, which were heard on 14 November 2023. A ruling was delivered on 7 December 2023, and the court dismissed the objections dated 12 October 2023 and directed the respondent to pay costs assessed at Ksh. 50,000.
2. In the ruling, the court observed the conduct of the respondent that had earlier been the subject of the Court of Appeal in Civil Appeal No. 28 of 2015 and the ruling delivered on 10 March 2017. The respondent was noted to have delayed and obstructed justice at every corner. The Court of Appeal observed that the respondent had moved without good faith.
3. Similar conduct is noted in this case.
4. When the matter came up for hearing on 20 February 2024 and 13 March 2024, the respondent sought more time to file a response. On 16 April 2024, the respondent's advocate indicated he wanted to cease acting for the respondent. Another hearing date was allocated for 28 May 2024, but the claimant's representative was absent when the matter was dismissed for want of attendance. The suit was dismissed.
5. The claimant moved the court to reinstate the suit, which was allowed by a ruling delivered on 26 September 2024, and to pay the respondent costs.



6. The respondent filed an application dated 13 November 2024 seeking a stay of proceedings to appeal to the Court of Appeal against the 26 September 2024 ruling. This application was dismissed in a ruling delivered on 6 February 2025.
7. A hearing date was allocated for 18 March 2025, and the respondent's advocate applied to cease acting for the respondent. The claim was served on the respondent by substituted service, as entry to the premises was not possible. During other attendances in court on 16 March 2025, 29 April 2025, 1 July 2025, and 24 July 2025, the court observed that on the virtual platform, a representative of the respondent remained present without responding when the matter was called.
8. The claim was therefore heard in the absence of the respondent.

### **Claim**

9. The issue in dispute is the respondent's refusal to implement the parties' collective agreement (CBA).  
The claimant is seeking the following:
  1. An order against the respondent to pay the claimant all the salary arrears of Ksh. 21,764,098.11 and service gratuity of Ksh. 12,580,046, as tabulated at appendix WAN 4 of the Memorandum of Claim, totaling Ksh. 34,344,144.11. An additional amount is yet to be tabulated for the 6 employees due to a lack of their details since we are yet to reach them as they were terminated.
  2. An order against the respondent to pay the interest at court rates to the entire amount from the effective date of the CBA being 1 August 2012.
  3. Costs of the suit.
  4. Any other relief the court may deem fit to grant.
10. The claimant and the respondent have a CBA effective 1 August 2012, having signed it on 20 November 2020. The CBA was a result of Mombasa ELRC Cause No. 152 of 2012 and Mombasa Civil Appeal No. 28 of 2015.
11. The respondent refused to forward the CBA, leading to the claim filing suit.
12. While delaying the hearing and finalization of the appeal, the respondent terminated the employment of over 100 employees and left 4 who are still members of the claimant. The intention was not to pay the wage arrears.
13. The respondent only signed the CBA after the court issued contempt of court proceedings. The salary arrears due are outstanding and unpaid under clause 15(b) of the CBA with regard to service gratuity and notice pay. The respondent is in breach of section 59(5) of the *Labour Relations Act* and articles 41 and 47 of *the Constitution*, which require fair labour practices and fair administrative action.
14. The orders sought should be issued.
15. The claimant called Francis Angaira Jirongo, the Coast region secretary, who testified that there is a CBA between the parties, which was issued following Mombasa Cause No. 152 of 2012. There was a protracted dispute over the implementation of the CBA, leading to Mombasa Civil Appeal No. 28 of 2015. As security, the respondent deposited Ksh. 12 million for stay pending appeal, and the claimant liquidated the security upon the appeal being dismissed.
16. Ksh. 10 million was meant for security pending appeal as of August 2012. With effect from the date of judgment in June 2024, the dues to the claimant and its members have increased.



17. The delay in CBA registration was due to the long litigation at the Court of Appeal, where the respondents refused to sign the CBA. The respondent objected to the registration of the CBA, which was to benefit all unionisable employees with effect from 1 August 2012.
18. 95% of the unionisable employees have since been dismissed from their employment. They were not paid their terminal dues due to ongoing litigation. Upon termination of employment, the unionisable employees are entitled to terminal dues under the CBA from the date of registration, 1 August 2012.
19. The company is seeking the responsibility to pay Ksh. 24,344,144.11 plus the Ksh. 10 million liquidated as claimed. The company has attached the schedule of all affected employees. The Ksh. 10 million was to cover salaries plus house allowance from 1 August 2012 to July 2024. There is a balance of Ksh. 34,344,144.11 covering salary and house allowance from 1 August 2024 to 2018.
20. The employees and members of the claim are entitled to service gratuity and notice pay pursuant to the CBA terms.

### **Response and counterclaim**

21. In response, the respondent admitted that there is a CBA registered with the court. The deposit of KSh. 10 million has not been liquidated as alleged. All salary arrears and terminal dues were settled before the signing of the CBA.
22. There is no breach of the LRA or *the constitution*, as alleged. The claim relates solely to the implementation of the CBA under the LRA, which the respondent effected before its registration.
23. The pecuniary award sought by the claimant is arbitrary and unsupported by conclusive evidence. The claimant has not taken into account the Ksh. 10 million liquidated and which Nuru Hamed had sworn an affidavit on 23 November 2020 to that effect. The claimant has referred to 6 unknown persons for an additional ward which is without merit.
24. The claim should be dismissed.

### **Counterclaim**

25. In counterclaim, the respondent's case is that the claimant owes the respondent Ksh. 869,587.44 is the balance from the liquidated sum of KSh. 10 million after satisfaction of the court judgment sum. The claimant has not acknowledged receipt of Ksh. 10 million by way of liquidated guarantee and therefore comes to court with unclean hands.
26. The counterclaim should be allowed with costs.
27. No evidence was called by the respondent. As outlined above, despite all efforts to have the respondent attend in these proceedings, the same were frustrated.
28. The claimant filed written submissions that under action 59(5) of the LRA, a CBA is enforceable once it is registered with the court. The CBA between the parties was registered on 21 February 2023 under CBA No. 107 of 2022 after the respondent failing to sign it and leading to protracted suits ending at the Court of Appeal in Mombasa Civil Appeal 28 of 2015.
29. The CBA took effect on 1 August 2012. To frustrate the CBA, the respondent terminated unionisable employees in 2018 without payment of their terminal dues, which are analyzed by the claimant under Schedule WAN 4, amounting to KSh. 24,344,144.11. These comprise salaries, notice pay, house allowance and service gratuity.



## Determination

30. As outlined above, the respondent has frustrated the court process at every corner. The findings by the Court of Appeal in Civil Appeal No. 28 of 2015 did not make any change.
31. The cooperation of the respondent and attendance I these proceedings would have assisted the court and the parties to resolve the dispute seamlessly.
32. Despite response and counterclaim, there are no work records filed by the respondent in response to the schedule WAN 4 filed by the claimant. The only records filed dated 11 April 2024 are matters unrelated to work records and only background materials to the disputes between the parties.
33. The claimant is seeking to enforce the CBA registered with the court under CBA No. 107 of 2022, registered on 21 February 2023. The subject CBA is dated 20 November 2020, and under cause 28, it took effect on 1 August 2018.
34. The CBA was registered with the court following protracted disputes arising from the respondent's refusal to sign it. Under CBA No. 107 of 2022, the court delivered a ruling on 7 December 2022, holding that the respondent's refusal to sign the CBA lacked basis and providing a background to all disputes that preceded the ruling. The respondent's objections were dismissed, with costs assessed at KSh. 10,000.

Under section 59(5) of the LRA, a CBA is enforceable upon registration on its terms;

- (5) A collective agreement becomes enforceable and shall be implemented upon registration by the Employment and Labour Relations Court and shall be effective from the date agreed upon by the parties.
35. Upon the registration of the CBA, it acquires the force of law. It is binding on parties to it as held in *Kenya Airways Ltd v Aviation & Allied Workers Union* (2014) eKLR and *Kenya Union of Commercial, Food & Allied Workers v Gikambura Dispensary* [2012] eKLR where the courts emphasized that a registered CBA is legally binding and must be implemented fully and without delay, failure of which constitutes a breach of statutory and contractual duty.
36. in *NUMSA v Bader Bop (Pty) Ltd* [2003] 1 BLLR 1 (CC) the South African Constitutional Court, held that once a CBA is concluded and registered, it becomes enforceable and any failure to implement it amounts to a violation of workers' rights.
37. In this case, the respondent's continued refusal to sign the CBA has stalled the enjoyment of its terms and conditions by the unionisable employees and members of the claimant. Upon registration, the CBA taking effect from 1 August 2012 is enforceable against the respondent. See *Amalgamated Union of Kenya Metal Workers v Mohamed t/a Rizwan Metal Craft* [2023] KEELRC 2305 (KLR)
38. Indeed, in the case of *University Academic Staff Union (UASU) v Garissa University; Ministry of Labour and Social Protection & another (Interested Parties)* (Miscellaneous Case E088 of 2023) [2023] KEELRC the court emphasized that a CBA is a binding agreement analogous to any other contract and may only be set aside on the principles that govern the setting aside of ordinary contracts such as duress, undue influence, misrepresentation, mistake as held in *Social Services League, M.P. Shah Hospital v KUDHEIHA and Nairobi City County Government v Kenya County Government Workers Union; Salaries and Remuneration Commission* (Interested Party Applicant).
39. There is no challenge to the employees' schedule under WAN 4. This comprises a schedule of employees based on the position held, basic wage, the annual rate of increment, and the cumulative



arrears in salary and house allowances. The respondent's claim that these dues were paid in 2018 lacks any supporting evidence. Without the CBA registration, which was frustrated mainly by the respondent, the accrued salaries and house allowances are due.

40. The claimant has well tabulated the total dues at KSh. 34,344,144.11  
There is an acknowledgement of a security deposit of Ksh. 10 million following contempt of court proceedings against the respondent.
41. Such security deposited must be accounted for in seeking justice. The claimant's assertion that such a deposit is expended pending these proceedings is without evidence. Despite the respondent's not attending, justice demands that each party abide by due process.
42. The due sum claimed at Ksh. 34,344,144.11 shall be paid less a Ksh. 10 million deposit that shall be released to the claimant.
43. In labour relations, on the claim for payment of interest on the judgment sum from 1 August 2012, once the employee is restored to the state disrupted, costs and interest should be applied sparingly. However, the court takes into account the protracted disputes leading to the current suit. The conduct of the respondent is noted above. The matters herein would have easily been resolved had there been full cooperation by the respondent.
44. In this regard, the respondent shall pay the dues owed to the claimant and its members within 30 days, after which the same shall accrue interest from the date hereof until payment in full. To assist the claimant, the Commissioner for Labour shall take up the matter, enter the shop floor, investigate the respondent's affairs, and report to the court within 30 days. The Commissioner for Labour is at liberty to seek further assistance from the court and other government agencies for access to any work records, information and materials held by the respondent in this regard. The respondent shall pay any costs incurred by the Commissioner for Labour in this regard.
45. Further, the claimant is entitled to costs of litigation and shall be assessed by the court at KSh. 300,000 pursuant to section 12(4) of the *Employment and Labour Relations Court Act*.
46. On the claim that there are 6 other employees whose employment has been terminated without the knowledge of the claimant and should be considered herein, such is a fishing expedition. The claimant should establish the correct facts and address them accordingly.

Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms;

- a. The CBA between the parties registered under CBA No. 107 of 2022 is enforceable with effect from 1 August 2018.
  - i. The respondent shall pay the claimant all the salary arrears of KSh. 21,764,098.11
  - ii. Service gratuity of Ksh. 12,580,046.  
Tabulated under Appendix "WAN 4" of the Memorandum of Claim  
Totalling to Ksh. 34,344,144.11
- b. Dues above are to be paid within 30 days, after which the same shall accrue interest from this date until paid in full.



- c. The Commission for Labour shall attend and inspect the respondent on adherence to the above (a) in accordance with paragraph (44) above, and report to the court within 60 days from the date hereof. The respondent shall pay any costs incurred thereof.

The ELRC Registrar shall serve in this regard.

- d. Costs assessed at Ksh. 300,000.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

