



**Kenya Engineering Workers Union v RM Patel & Partners Limited (Cause E035 of 2024) [2025] KEELRC 3443 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3443 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E035 OF 2024  
MA ONYANGO, J  
NOVEMBER 27, 2025**

**BETWEEN**  
**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**  
**AND**  
**RM PATEL & PARTNERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the *Labour Relations Act* to represent the interests of all unionisable employees in the engineering sector as more specifically outlined in the membership clause of its constitution.
2. The Respondent is a company registered under the laws of Kenya and engages in business in Kenya. Its employees are members of the Claimant.
3. The Claimant and the Respondent have a valid and subsisting recognition agreement signed on 1<sup>st</sup> July 2020 and a collective bargaining agreement (CBA). The dispute herein arose in the course of reviewing the parties' CBA.

**The Claimant's Case**

4. It is the Claimants case that pursuant to Clause 31 of the parties' CBA, the parties held negotiations of the CBA and signed an agreement before the Conciliator.
5. The Claimant states that it forwarded its CBA proposal for review of the CBA to the Respondent, but the Respondent declined to negotiate on grounds that its business was allegedly not doing well.
6. The Claimant contends that following the Respondent's refusal to review and negotiate the CBA, it invoked section 62 of the *Labour Relations Act* and reported a trade dispute to the Ministry of Labour, which was registered under Ref. No. MLSP/LD/IR/52/2023.



7. That thereafter, Ms. Caroline Chomursoi of Eldoret County Labour Office was appointed to conciliate the parties. The Conciliator convened various meetings but the dispute remained unresolved as the Respondent maintained that business performance had declined. It is the Claimant's case that the Respondent did not produce any documentation during the meetings to substantiate the claim.
8. Consequently, the conciliator issued a Certificate of Unresolved Trade Dispute paving way for the institution of the dispute in court.
9. In the Memorandum of Claim dated 5<sup>th</sup> July 2024, the Claimant prayed for the following orders against the Respondent: -
  - i. A declaration that the Respondent's refusal to review/negotiate the parties' CBA is in bad faith, unfair, and unlawful.
  - ii. An order adopting the Claimant's CBA proposal and directing the parties to execute the same within fourteen (14) days of the judgment date.
  - iii. A mention date to confirm compliance with the Court's orders.
  - iv. Costs of the suit to be borne by the Respondent.
  - v. Any other relief the Court may deem fit to grant.
10. Together with the Memorandum of Claim the Claimant filed a Notice of Motion in which it sought the following prayers: -
  - a. Spent.
  - b. That the Honourable court be pleased and issue an order against the Respondent herein to produce the audited financial statements for the past two (2) years between 1<sup>st</sup> July 2020 to 30<sup>th</sup> June 2022, produce wage bills for both unionisable and management staff and the highly paid unionisable employee and lowly paid management staff salaries before submission on the main claim
  - c. That in the alternative, the Honourable court do and hereby issue an order invoking Rule 37 of the Employment and Labour Relations Court Rules, 2016 referring the matter to Central Planning and Monitoring Unit (CPMU)
  - d. That any other relief the Honourable Court may deem fit to grant
  - e. That the cost of this application be met by the Respondent herein
11. Upon considering the application which was filed under certificate of urgency, the court fixed the matter for inter partes hearing on 9<sup>th</sup> October 2024 and directed the Respondent to file response to both the application and the Memorandum of Claim.

### **The Respondent's Case**

12. In response, the Respondent filed a Statement of Response together with a Counterclaim. The Respondent denied receiving the CBA proposal as alleged, stating instead that only verbal communication took place.
13. The Respondent further contended that its business had significantly declined, making renegotiation of the CBA untenable. It claimed that it was experiencing cash-flow challenges and was contemplating



redundancies. It asserted that unless its financial circumstances improved, review of the CBA would not be feasible.

14. In its Counterclaim, the Respondent sought the following orders:
  - i. A declaration that the Claimant's actions are unreasonable.
  - ii. A declaration that the CBA proposal cannot and should not be adopted in light of the Respondent's financial position.
  - iii. An order that the prevailing circumstances do not favour a review of the CBA.
  - iv. Costs of the suit and the counterclaim.
  - v. Any other relief the Court may deem just and fit.
15. When the matter came up in court for inter partes hearing of the Claimant's application on 9<sup>th</sup> October 2024, the court referred the matter to the Central Planning & Project Monitoring Department of the Ministry of Labour and Social Protection (CPMU) to prepare an economic report to assist the court in determining the dispute as is customary for economic disputes.
16. The CPMU report dated 23<sup>rd</sup> January 2025 was filed in court on even date.
17. On 4<sup>th</sup> March 2025, parties applied that the suit be disposed of by way of written submissions. The Claimant's written submission are dated 31<sup>st</sup> January 2025 while the Respondent's submissions are dated 4<sup>th</sup> March 2025. The parties reiterated their different positions hence no need.

### **CPMU Report**

18. In the Report, the CPMU noted that the Respondent did not avail its audited books for scrutiny but stated that the business is undergoing a myriad of financial challenges affecting ability to offer any upward wage review.
19. The report indicated that in the absence of audited financial statements, it was impossible to independently verify the Respondent's ability to pay or lack of it thereof.

### **Claimant's Submissions**

20. In its submissions, the Claimant identified the issues for determination to be:
  - i. Whether the declarations sought in the Counter Claim are grantable.
  - ii. Whether the prayers sought by the Claimant in her Memorandum of Claim are merited and grantable.
21. On the first issue, the Claimant argued that the Respondent failed to file any evidence supporting its allegations, despite being granted an opportunity to do so.
22. It submitted that the Respondent ignored a further opportunity to avail audited financial statements to the CPMU and therefore its Counterclaim should fail.
23. On the second issue, the Claimant argued that the CPMU's inability to analyze productivity was due to the Respondent's failure to provide audited statements.
24. The Claimant further submitted that the Respondent's unionisable wages and allowances were significantly lower than those in comparable CBAs in the sector. It referred the Court to various comparative clauses on house allowance, leave travelling allowance, death benefits, safari allowance and



wage increments. It urged the Court to adopt the Claimant's proposals and maintain the historical effective date of 1st July 2021.

25. The Claimant relied on ELRC Cause No. 31 of 2019 (Kisumu) Kenya Engineering Workers Union v Abyssinia Iron & Steel Ltd where the Court held that uniformity of standards across employers in a sector may be fair and reasonable.
26. The Claimant also cited ELRC Cause No. 1193 of 2018 Bakery, Confectionary, Food Manufacturing & Allied Workers Union v Mill Bakers Ltd & Rael Careers Ltd where the Court adopted a CBA drafted by the Claimant after the employer failed to participate meaningfully in negotiations.
27. The Claimant therefore urged the Court to grant the reliefs sought in the Memorandum of Claim.

### **Respondent's Submissions**

28. The Respondent relied on the CPMU Report (Part C, Table 1) showing a downward trajectory in employment and wage costs. It submitted that Part C, Table 2 showed declining labour costs between 2021 and 2024, including a reduction of approximately Kshs. 10 million overall.
29. The Respondent argued that the CPMU had adequate opportunity to observe documents during the site visit and therefore had sufficient basis to assess the economic situation.
30. It submitted that the Claimant's proposed increment of Kshs. 4,601,480.96 over two years is unfeasible in the current economic climate.
31. The Respondent argued that imposing such demands would force it to lay off employees to survive.
32. It reiterated that it is financially unable to negotiate new CBA terms until circumstances improve.
33. The Respondent urged the court to disallow the claimant's claim and grant it the orders it seeks in the counterclaim.

### **Analysis and Determination**

34. I have considered the pleadings, the CPMU Report, and the parties' submissions. The issues for determination are: -
  - i. Whether the Respondent has established a justifiable basis for refusing to negotiate or review the CBA.
  - ii. Whether the Claimant's prayers are merited.
  - iii. Whether the Counterclaim is merited.
  - iv. What orders should issue

### **Whether the Respondent has established a justifiable basis for refusing to negotiate or review the CBA**

35. Section 54 of the *Labour Relations Act* imposes a statutory duty on an employer who has entered into a recognition agreement with a trade union to engage in collective bargaining with that union. The duty to negotiate in good faith is mandatory and cannot be circumvented except in circumstances expressly permitted by law.
36. The Respondent contended that it was experiencing financial challenges, including reduced business activity, declining labour costs and potential redundancies. However, despite repeated requests by the



- Claimant and the Conciliator, the Respondent failed to produce audited financial statements or any verifiable documentation to substantiate its alleged inability to pay.
37. The CPMU similarly reported that the Respondent did not avail its audited accounts for analysis, thereby preventing an independent assessment of its financial position. The only observable data indicated a decline in employment numbers and wage bills, which, on their own, do not establish the inability to engage in collective bargaining or justify a refusal to negotiate.
  38. Where an employer relies on inability to pay as a justification for refusing to negotiate, the evidentiary burden rests squarely on the employer to demonstrate that position through credible financial records. Mere assertions or verbal explanations are not sufficient.
  39. Accordingly, the Court finds that the Respondent did not establish a lawful or reasonable basis for refusing to negotiate or review the CBA as required under Section 54 of the Act.

### **Whether the Claimant's prayers are merited**

40. The Claimant seeks, among other reliefs, a declaration that the Respondent acted in bad faith and an order adopting the Claimant's CBA proposals. It argued that the Respondent's refusal to negotiate was deliberate and unsupported by evidence.
41. The Claimant further contended that the Respondent's terms of employment for unionisable employees were significantly below sector standards. However, no comparative CBAs were produced to substantiate the alleged disparity in wages and allowances.
42. While the absence of comparative CBAs weakens the Claimant's argument on sector uniformity, the Court's primary concern remains the Respondent's statutory obligation to negotiate in good faith, which exists independently of wage comparisons with other companies.
43. The Respondent's persistent refusal to provide audited financial statements or participate meaningfully in negotiations hindered both conciliation and the CPMU's economic evaluation. The Court must therefore assess whether such conduct justifies adoption of the Claimant's proposals.
44. Courts generally adopt a party's CBA proposals where an employer has unjustifiably refused to negotiate or has frustrated the collective bargaining process. This ensures that employers do not benefit from non-disclosure or obstruction and upholds the constitutional principles of fair labour practices and the right to engage in collective bargaining.
45. Having considered the record, the Court finds that the Respondent's conduct constituted a refusal to negotiate in good faith. The remaining question is whether the entire CBA proposal should be adopted as prayed.
46. Although the Claimant's proposals were not shown to be excessive or unreasonable, the lack of comparative CBAs and analysis from CPMU prevents the Court from conclusively determining whether the proposed terms align with sector norms. Nonetheless, the CPMU Report did not identify any fundamental economic impediments that would render the proposals unworkable, aside from the Respondent's unverified assertions.
47. Considering all the relevant factors the Court finds that the appropriate remedy is to allow the parties another opportunity to negotiate the CBA under the guidance of the County Labour Officer.



**Whether the Counterclaim is merited The Respondent seeks declarations that the Claimant acted unreasonably and that economic circumstances do not favour any CBA review.**

48. As already stated, the Respondent failed to substantiate its claims of financial distress and frustrated both statutory conciliation and the CPMU's economic evaluation processes. Its refusal to provide audited financial statements or participate meaningfully in negotiations cannot be attributed to the Claimant.
49. In the circumstances, the Respondent has not demonstrated any basis upon which the declarations sought can be granted. The Counterclaim is therefore without merit.

**What reliefs should issue?**

50. The Court notes that the *Labour Relations Act* promotes dialogue and negotiation between employers and trade unions. When a party fails to engage in good faith, the proper remedy is to order meaningful negotiations rather than unilaterally impose terms without sufficient supporting evidence.
51. In light of the foregoing findings, the Court makes the following orders:
- i. The Respondent's Counterclaim is hereby dismissed.
  - ii. The Respondent is directed to engage in good faith negotiations with the Claimant on the terms of a new Collective Bargaining Agreement within 30 days from the date of this judgment assisted by the County Labour Officer. Should the Respondent refuse to negotiate the court will be compelled to grant the demands of the union as per union proposal.
  - iii. The parties are directed to report progress to the Court on a mention date to be fixed on the date of delivery of this judgment.
  - iv. This being an economic dispute, each party shall bear its costs of this suit.

**DATED, DELIVERED AND SIGNED THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**M. ONYANGO**

**JUDGE**

