Banking Insurance and Finance Union (Kenya) v Agricultural Finance Corporation (AFC) (Cause E067 of 2025) [2026] KEELRC 74 (KLR) (23 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 74 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E067 OF 2025

SC RUTTO, J

JANUARY 23, 2026

BETWEEN

BANKING INSURANCE AND FINANCE UNION (KENYA) ..... CLAIMANT

AND

AGRICULTURAL FINANCE CORPORATION (AFC) ..... RESPONDENT

JUDGMENT

1. The Claimant instituted this suit by way of a Memorandum of Claim dated 30th January 2025, in which it avers that, pursuant to the Recognition Agreement between itself and the Respondent, the parties have negotiated several Collective Bargaining Agreements (CBAs), the most recent being for the period 1st July 2017 to 30th June 2021.

2. The Claimant avers that the said CBA was duly executed on 15th December 2021, but, for reasons unknown, was never registered in court.

3. The Claimant further avers that the CBA for the period 2013–2017 was duly executed by the parties and subsequently registered as C/A No. 59 of 2014 on 2nd April 2014. It is the Claimant's contention that the said CBA remains in force and binding upon the parties from its commencement date, and that the agreement became enforceable and capable of implementation upon its registration by the Court.

4. It is the Claimant's assertion that, pursuant to Clause 12(1) of the CBA, the parties agreed that all unionisable employees would receive an annual salary increment of 5% at the beginning of each financial year, being in July of every year.

5. The Claimant asserts that it is clear that all union members were entitled to a 5% annual salary increment with effect from 1st July 2023, and a further 5% annual salary increment from July 2024 to date, together with all consequential arrears.

6. According to the Claimant, the Respondent has offered no explanation for its failure and/or refusal to pay the said employees their dues for a period of almost two (2) years.

7. In the Claimant's view, the Respondent has violated the CBA with impunity and arrogance without providing any justifiable reasons.

8. The Claimant further states that it referred the dispute to the Cabinet Secretary for Labour and Social Protection, whereupon the trade dispute was accepted and a conciliator, Mr. Joel Mwanzia was appointed to resolve the dispute.

9. According to the Claimant, the Respondent's representatives admitted before the conciliator that the annual salary increment was due to the employees by July 2023, notwithstanding that it had not been paid.

10. It is the Claimant's contention that no subsequent conciliation meeting has been convened and neither a conciliation report nor a certificate of unresolved dispute been issued by the conciliator, as required by law.

11. Against this background, the Claimant seeks the following reliefs:

    a. That Claimant/Applicant pray to this Honourable Court to order for the immediate computation and payment of the 5% Annual Salary Increment to all the union members as at 1st July, 2023 and another 5% annual salary increment as it July, 2024 and pay to the unionisable employees of the corporation.

    b. That Claimant further pray to the Honourable Court to compel the Respondent herein to compute the said 5% Annual Salary retrospectively with effect from 1st July, 2023 and another 5% annual salary increment as July, 2024 with all the Back pay and the ensuing Arrears.

    c. That the Claimant finally pray to the Honourable Court to order the Respondent to pay all the union members who were in Employment as at 1st July, 2023 and to compute and pay them the 5% Annual Salary Increments as from 1st July, 2023 and another 5% Annual salary increment as at July, 2024 until the dates of their exit from the corporation for whatever reasons either by way of Resignation, Retirement, Termination and Promotion to management Grades or otherwise.

12. The Respondent opposed the Claim by way of a Memorandum of Response dated 7th October 2025, in which it asserts that it recognizes the right of its employees to belong to and/or participate in trade union activities.

13. The Respondent concedes that the most recent CBA that was negotiated, duly signed, and registered covered the period 2013 to 2017. The Respondent further contends that, notwithstanding registration, the law expressly requires that all CBAs in the public sector must undergo review and obtain guidance and approval from the Salaries and Remuneration Commission (SRC) prior to completion and registration.

14. The Respondent further avers that the CBA for the period 2013 to 2017 included provisions for salary increments under Clause 12.

15. The Respondent further avers that the 5% annual increment claimed by the Claimant never received the mandatory approval of the SRC and is therefore unenforceable. In the Respondent's view, any attempt to implement the increment would constitute a direct violation of Article 230 of *the Constitution* and the *Labour Relations Act*.

16. The Respondent further states that, at the time of signing the CBA, it acted in accordance with the parameters approved by the SRC. These parameters were designed to ensure compliance with public policy and regulatory requirements, particularly regarding monetary provisions.

17. The Respondent maintains that the Claimant's present demand for 5% annual salary increments from July 2023 to date is unfounded, as no valid or enforceable right arises in the absence of SRC approval.

18. The Respondent further avers that, as a state corporation, its employees are state officers and are therefore bound by the provisions of *the Constitution* of Kenya relating to state officers, as well as Section 11 of the *Salaries and Remuneration Commission Act*.

19. The Respondent denies the alleged entitlement and refutes any breach of the 2013–2017 CBA, asserting that the agreement is null and void, as the parties erroneously proceeded with registration without obtaining the SRC's mandatory approval.

20. The Respondent further avers that its Board, acting within its mandate, passed a resolution halting any payments arising from the increment. According to the Respondent, the resolution was made following careful consideration of the circumstances, and at all times, it has acted lawfully and responsibly to safeguard public resources.

21. On 9th October 2025, the parties consented to have the matter determined on the basis of documentary evidence in accordance with Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024. Subsequently, the parties were directed to file and exchange written submissions within the timelines specified by the Court.

Submissions

22. Both parties complied with the Court's directions and filed their respective written submissions. On its part, the Claimant submitted that, pursuant to Section 59(5) of the *Labour Relations Act*, it has a valid and enforceable CBA, and that the Respondent is consequently estopped from invoking Regulation 18 of the SRC Regulations, 2013, having failed to discharge its statutory obligations and having implemented the CBA for a period exceeding eight years.

23. The Claimant further submitted that a benefit incorporated into the contracts of unionisable employees pursuant to Section 59(3) of the *Labour Relations Act* cannot, at this stage of implementation, be withdrawn or denied, as doing so would amount to a violation of Articles 41 and 47 of *the Constitution* of Kenya, which guarantee fair labour practices and fair administrative action. In support of this position, reliance was placed on Miyawa & 7 Others v Judicial Service Commission [2017] KEELRC 1735 (KLR) and Universities Academic Staff Union (UASU) v Moi University (Employment and Labour Relations Petition E016 of 2022) [2025] KEELRC 422 (KLR).

24. Referencing the case of University Academic Staff Union (UASU) v Egerton University; Ministry of Labour and Social Protection & another (Interested Parties) (Miscellaneous Case E086 of 2023) [2023] KEELRC 2803 (KLR), the Claimant submitted that the Respondent's allegations of non-compliance raised at this stage appear to be an afterthought aimed at forestalling implementation of the CBA.

25. It was the Claimant's further contention that the entire process culminating in the execution of the CBA was voluntary and followed structured negotiations in which both the employer and the Claimant made full disclosure, bargained in good faith, and acted in mutual trust and cooperation. In the Claimant's view, once a CBA is duly signed and registered by the Court as required by law, its terms bind the parties and the employees on whose behalf it was negotiated.

26. On its part, the Respondent submitted that under Section 11 of the *Salaries and Remuneration Commission Act*, the SRC has the exclusive constitutional and statutory mandate to advise on and approve remuneration and benefits for public officers.

27. The Respondent further contended that any CBA in the public sector containing monetary clauses, including provisions for annual salary increments, requires prior approval by the SRC. It was the Respondent's further submission that any unilateral implementation of such increments in the absence of SRC approval would be unlawful and consequently null and void.

28. In this regard, the Respondent submitted that the Claimant's reliance on the 5% annual salary increment stipulated in the CBA is legally unsustainable, as the said increment did not receive SRC approval and therefore cannot give rise to enforceable rights. To this end, the Respondent denied any breach of the 2013–2017 CBA.

29. The Respondent further submitted that the negotiation and registration of CBAs in the public sector must conform to considerations of public policy, fiscal prudence, and compliance with SRC guidelines. In the Respondent's view, the implementation of increments in contravention of SRC advisories would violate Article 230(5)(a) of *the Constitution*, which requires that the total public compensation bill remain fiscally sustainable.

30. The Respondent maintained that it acted lawfully and in the public interest by halting payments arising from increments that had not been approved by the SRC.

31. In support of its submissions, the Respondent placed reliance on Inter Public Universities Councils Consultative Forum of the Federation of Kenya Employers v Kenya Union of Domestic, Hotels, Education Institutions and Hospital Workers (KUDHEIHA) & 2 others; Ministry of Education & 3 others [2021] KEELRC 2298 (KLR) and Salaries and Remuneration Commission v Kenya Union of Commercial, Food and Allied Workers (KUCFAW), The Attorney General and National Social Security Fund (NSSF), Civil Appeal No. E489 of 2020.

Analysis and Determination

32. Based on the pleadings by both parties, the evidence on record and the rival submissions, it is evident that the Court is tasked with determining the following issues:

    a. Whether the Respondent is in breach of the 2013/2017 Collective Bargaining Agreement;

    b. Is the Claimant entitled to the reliefs sought?

Whether the Respondent is in breach of the 2013/2017 CBA

33. It is common ground that the parties herein entered into a CBA covering the period 2013 to 2017. The Claimant asserts that a subsequent CBA was negotiated for the period 1st July 2017 to 30th June 2021 but was never registered in Court, and on that basis contends that the 2013–2017 CBA remains in force and binding upon the parties.

34. It is the Claimant's case that pursuant to Clause 12 of the 2013–2017 CBA, all unionisable employees are entitled to a 5% annual salary increment at the beginning of each financial year, being July of every year. The Claimant contends that the Respondent has offered no explanation for its failure to pay the affected employees their annual salary increments from 1st July 2023 to date, and on this basis cites the Respondent for breach of the said CBA.

35. On the other hand, the Respondent contends that the 5% annual salary increment claimed by the Claimant did not receive the mandatory approval of the SRC and is therefore unenforceable. In this regard, the Respondent maintains that, in the absence of such approval, the Claimant's demand for the 5% annual salary increment is misplaced.

36. It is not in dispute that the CBA in question was duly registered in Court on 2nd April 2014 under C.A. No. 59 of 2014.

37. Section 59(3) of the *Labour Relations Act* is explicit that the terms of a collective agreement shall be incorporated into the contract of employment of every employee covered by the agreement.

38. And further, Section 59(5) of the *Labour Relations Act* provides that a collective agreement becomes enforceable and shall be implemented upon registration by the Court.

39. Applying the provisions of Sections 59(3) and 59(5) of the *Labour Relations Act* to the present case, it follows that the 2013–2017 CBA, upon registration, became enforceable and was incorporated into the contracts of employment of the Respondent's unionisable employees.

40. Indeed, it is not in dispute that following the registration of the CBA, the Respondent implemented its terms and effected annual salary increments for the unionisable employees until its Board halted further implementation.

41. The Respondent's position that the CBA is unenforceable because the parties erroneously registered it without the mandatory approval of the SRC does not hold, as it has taken no steps to set aside the CBA on the basis of the alleged nullity.

42. In any event, as the employer, the Respondent bears the responsibility under Regulation 18 of the SRC Regulations to seek the SRC's advice before commencing any collective bargaining process with the union. Consequently, it is estopped from relying on its own inaction to avoid implementing a term that has already been incorporated into the employment contracts of its unionisable employees.

43. In view of the foregoing, the Court finds that the Respondent's suspension of further implementation of the CBA effectively constituted a breach. This finding is underscored by the fact that, pursuant to Section 59(3) of the *Labour Relations Act*, the CBA had already been incorporated into the employees' contracts, and any suspension therefore constituted a direct repudiation of a contractual term, in breach of the Respondent's binding obligations to its employees.

Reliefs?

44. Having found that the Respondent breached the 2013-2017 CBA by failing to implement its terms, the Court holds that the Respondent's unionisable employees are entitled to the 5% annual salary increment provided under Clause 12 of the CBA.

Orders

45. In the final analysis, judgment is entered in favour of the Claimant, and the Court hereby directs the Respondent to effect payment of the 5% annual salary increment to all employees covered by the CBA, with effect from 1st July 2023.

46. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant No appearance

For the Respondent No appearance

Court Assistant Catherine

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE