



REPUBLIC OF KENYA



**KENYA LAW**  
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**Amalgamated Union of Kenya Metal Workers v Kenya Vehicle Manufacturers Limited  
(Civil Appeal 208 of 2018) [2025] KECA 170 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KECA 170 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL 208 OF 2018  
W KARANJA, J MOHAMMED & LK KIMARU, JJA  
FEBRUARY 7, 2025**

**BETWEEN**

**AMALGAMATED UNION OF KENYA METAL WORKERS ..... APPELLANT**

**AND**

**KENYA VEHICLE MANUFACTURERS LIMITED ..... RESPONDENT**

*(Being an Appeal from Ruling and Orders of the Employment and Labour Relations Court of Kenya at Nyeri (Nzioka wa Makau, J.) dated 11th July 2018 in ELRC Cause No. 98 of 2015)*

**JUDGMENT**

**Background**

1. Amalgamated Union of Kenya Metal Workers, (the appellant), filed a claim dated 9<sup>th</sup> June, 2015 before the Employment and Labour Relations Court (ELRC) (Nzioka wa Makau, J.) at Nyeri against the Kenya Vehicle Manufacturers Limited, (the respondent) seeking orders:
  - i. That the Court deem fit to find the actions of the respondent herein to be in violation of the parties' CBA, Article 41 of *the Constitution*, the provisions of the *Labour Relations Act*, 2007 Section 4 Part II and 48 and section 4 of the *Employment Act*, 2007 and declare the respondent's actions null and void.
  - ii. That the Court to order the respondent to forthwith comply with section 48 of the *Labour Relations Act*, 2007 by way of deducting and remitting union dues to the claimant from her members.
  - iii. That the Court to order the respondent, servants or respondent's agents to stop harassing and victimization of the claimant members on grounds of trade union activities or affiliation.
  - iv. That the respondent is ordered to issue the foresaid members of the claimant with letters of confirmation effective the date of being engaged by the respondent.



- v. That in alternative, the respondent is ordered that in event of termination all workers be paid their terminal dues as per the period commencing from the date of the engagement.
  - vi. That all employees listed in exhibit 5 of the claim bundle be paid the difference in remuneration for the period they have been in employment for their current earning and the parties' CBA.
  - vii. The respondent to pay the claimant's costs of the suit.
  - viii. Any other-order the court may deem fit to grant.
2. The appellant's claim before the ELRC was based on alleged injustice and discrimination at the work place. That the respondent had employed two groups of employees, that is, permanent employees and piece rate (piece work) employees and that the permanent employees constituted 20% of the respondents' total workforce. The remaining 80% being the piece rate employees who the respondent did not want to join the Union hence they had no Collective Bargaining Agreement (CBA) unifying their terms of service. The appellants maintained that the absence of a CBA left the piece rate employees at the mercy of the respondent exposing them to exploitation and becoming a source of cheap labour.
  3. On the other hand, the respondent maintained that it was lawful to engage the employee on piece rate terms of service and the same was necessitated by the nature of their business and for reasons that the business had declined. That the respondent would negotiate with the piece rate employees once they obtained an order to assemble a vehicle and on agreement a contract would be signed on the agreed terms of service based on the amount of work. As such, each piece rate employee negotiated his terms of service and the same were not contained in the CBA.
  4. However, the respondent stated that they were willing to include the terms of the piece rate employees in the CBA as per the conciliator's recommendations.
  5. After considering the claims before it and the responses made, the ELRC (B. Ongaya J.) delivered his judgment in favour of the appellants in the following terms:
    - i. A declaration that the parties shall negotiate terms and conditions of service for the respondent's employees being on piece work pay arrangements and shall include such terms and conditions of service in the next collective agreement between the parties.
    - ii. A declaration that workers on the piece work pay arrangements as provided for in the *Employment Act*, 2007 are nevertheless, subject to such pay arrangements, entitled to the minimum terms and conditions of service as provided in the Act.
    - iii. The respondent to forthwith comply with section 48 of the *Labour Relations Act*, 2007 by way of deducting and remitting union dues to the claimant as deducted from the claimant's members and with effect from end of November, 2015.
    - iv. The declaration that the respondent, by itself or by its servants or agents shall not harass or victimize its workers being members of the claimant on grounds of trade union activities or affiliation or participation or association as per the relevant constitutional and statutory provisions.
    - v. Each party to bear own costs of the suit.
  6. On the basis of that judgment, the appellant alleged that they made several efforts to approach the respondent for negotiation but the respondent was reluctant. Consequently, after two years of waiting without success, the appellant moved the ELRC to compel the respondents to engage in negotiations and on the force of the ELRC, parties herein entered into negotiation and reached a settlement on



some issues and failed to agree on others. The appellant maintained that the respondent left seven (7) issues unresolved to wit: house allowance, effective date of the CBA, basic minimum wage, termination gratuity, baggage allowance, permanent position and piece rate work for genuine piece rate. The appellant again moved the ELRC for determination of the unresolved 7 issues stated by the appellant. It is at this point that the respondent opposed the move stating that the appellant was using the courts to compel the respondent to accept demands that had no legal basis and maintained that the ELRC had no jurisdiction to deal with the said issues raised.

7. The parties were directed to file written submissions on the unresolved issues and after considering the issues and the submissions filed, the ELRC (Nzioki wa Makau, J.) delivered his ruling on the 11<sup>th</sup> July, 2018 dismissing the appellant's application. In dismissing the appellant's application, the ELRC relied upon this Court's decision in Teachers Service Commission (TSC) vs Kenya Union of Teachers & 3 others [2015] eKLR for the holding that a court has no business settling the terms of a CBA. That the ELRC became functus officio after judgment of the ELRC (B. Ongaya, J.) was pronounced and that there was no legal basis for consideration of the matters raised by the appellants. It is this finding that provoked the appellant into filing the instant appeal.
8. The appellant filed its Notice of Appeal against the ruling delivered on 11<sup>th</sup> July, 2018.
9. The appellant filed a Memorandum of Appeal citing 3 grounds of appeal to wit that:
  - i. The honourable judge erred in law by declining to adapt the already agreed 20 clauses of the collective bargaining agreement between parties.
  - ii. The honourable judge erred in law by declaring that it had no jurisdiction to arbitrate on 7 clauses of the collective bargaining agreement.
  - iii. The honourable judge erred in law by dismissing the entire application without regard to constitutional provision for parties to negotiate collective bargaining agreement.
10. The appellant sought before this Court for orders that:
  - i. The honourable court be pleased to vacate the decision in the employment and labour relations court that the application by the appellant is dismissed
  - ii. The honourable court be pleased to grant the appellant prayer (a) of the appellant submission in the employment and labour relations court.
  - iii. The honourable court be pleased to invoke rule 37 of the employment and labour relations court rules 2016 and order for the arbitration on the 7 deadlocked items to ensure conclusion of the collective bargaining agreement for piece rate workers.

### **Submissions by Counsel**

11. The appeal was heard, parties were directed to file written submissions.

The appellant through its General Secretary Rose Auma Omamo (Ms. Omamo), filed its submissions while the respondent filed its submissions through Mr. Dickson M. Ouma Advocate from the Federation of Kenya Employers who was representing the respondent.
12. Ms. Omamo submitted that the issues for determination before this court are 2, that is: whether the ELRC erred in declaring that it had no jurisdiction to determine the application before it and became functus officio in the face of the appeal decision in TSC vs KNUT (supra) and whether the impugned decision offended the legislative statutes that would have led to the conclusion of the matter. The appellant submitted that the dispute over the seven (7) unresolved issues was properly before the



ELRC. That the ELRC erred by declining to appreciate its own mandate to enforce the orders made on 30<sup>th</sup> October, 2015 to include the piece rate unionisable employees in the CBA on grounds of lack of jurisdiction. Ms. Omamo further submitted that Section 12 of the ELRC Act clothed the ELRC with jurisdiction to determine economic disputes such as the one presented by the appellant.

13. The appellant relied upon this Court’s decision in *Kenya Tea Growers Association vs Kenya Plantation and Agricultural Workers Union* (2018) eKLR that it highlighted the mandate of the ELRC in the event of economic dispute and clarified the decision in *TSC vs KNUT* (supra) on the issue of jurisdiction of the ELRC in determining economic disputes revolving around CBA’s in quote:

“ ... A careful reading of the TSC case reveals that this Court did not hold that the ELRC had no jurisdiction at all to determine economic disputes revolving around CBA’s. The full bench appreciated that the ELRC had no jurisdiction to deal with economic dispute therein because the compulsory jurisdictional procedure on dispute resolution as set out under Part VIII of the LRA had not been followed. The long and short of it is that the ELRC can only assume jurisdiction to adjudicate on an economic dispute after the compulsory dispute resolution procedure under part VIII of the *Labour Relations Act* had been followed.”

Based on this authority, the appellant submitted that the ELRC erred and misinterpreted the *TSC vs KNUT* (supra) case since the matter at hand was procedurally legitimate.

14. The appellant relied on Article 41(5) of *the Constitution* on the freedom of unionisable employees and employer or employers’ organization to engage in negotiation regarding terms and conditions of employment. The appellant further submitted that the ELRC erred by failing to consider Section 57(1) of the *Labour Relations Act*, 2007 that mandates and requires the respondent to negotiate and conclude a collective agreement with the appellant. That it was also erroneous for the ELRC to decline to adopt the 20 clauses agreed by the parties. That the trial court failed to give directions provided under rule 37(1) of the Employment and Labour Relations Court Rules and Procedures or invoke Section 57(6) of the *Labour Relations Act* in determining the deadlock. It is the appellant’s submissions that the ELRC failed to observe principles set out by the legislative statutes pertaining to labour.
15. Counsel for the respondent opposed the appeal and submitted that the 20 clauses agreed by the parties were not disputed issues in the proceedings that led to the judgment and the impugned ruling of the ELRC. Counsel for the respondent further submitted that the ELRC could not invoke provisions of section 62 as read with sections 66 and 67 of the *Labour Relations Act*, 2007 and arrogate itself power to conduct conciliation. It is the respondent’s submission that the appeal is an abuse of the court process and warrants dismissal with costs.

## Determination

16. This is a first appeal. The Court reminds itself of its mandate as the first appellate court to re-evaluate the evidence, assess it and reach a conclusion. Reliance is put on Rule 31 (1) of the Court of Appeal Rules 2022 and this Court’s decision in *Gitobu Manyara & 2 Others v Attorney General* [2016] eKLR.
17. We have carefully perused the record, considered the impugned ruling, submissions by parties, the authorities cited and the law. We discern the main issues for determination to be: whether the ELRC had jurisdiction to arbitrate on the seven (7) disputed clauses of the CBA for piece rate workers as sought by the appellant; whether this Court should adopt the agreed clauses of the CBA and whether this Court should order for arbitration of the seven (7) disputed clauses of the CBA for piece rate workers.



18. Section 2 of the *Employment Act*, 2007 defines piece work as:

"Any work the pay for which is ascertained by the amount of work performed irrespective of the time occupied in its performance."

Section 18(1) (b) of the *Employment Act* provides for wages for piece work as follows:

"Where a contract of service entered into under which a task or piece work is to be performed by an employee, the employee shall be entitled:

- (b) in the case of piece work, to be paid by his employer at the end of each month in proportion to the amount of work which he has performed during the month, or on completion of the work, whichever date is the earlier."

19. We begin with the issue of whether the ELRC had jurisdiction to arbitrate on the seven (7) disputed clauses of the CBA. The appellant and the respondent engaged in negotiation for terms of service of the piece rate workers to be included in the CBA after the order of the ELRC in the judgment which stated as follows:

"A declaration that the parties shall negotiate terms and conditions of service for the respondent's employees being on piece work pay arrangements and shall include such terms and conditions of service in the next collective agreement between the parties."

20. The seven (7) unresolved issues as highlighted by the appellant are house allowance, effective date of the CBA, Basic Minimum Wage, Termination Gratuity, Baggage Allowance, Permanent position and Piece rate work for genuine piece rate. We note that the disagreement between the appellant and the respondent over the disputed seven (7) clauses of the CBA for piece rate workers is what led the appellant move back to court after judgment had been delivered and resulted to the impugned ruling. The trial court in dismissing the appellant's request to arbitrate on the disputed terms relied upon this Court's case of TSC vs KNUT (supra) and held that:

"The court cannot descend on the arena of negotiations of terms of employment at the work place"

21. The appellant's contention is that the ELRC misinterpreted the decision in TSC vs KNUT on the issue of jurisdiction of the ELRC in adjudication economic disputes of CBA's relying upon the case of Kenya Tea Growers Association vs Kenya Plantation and Agricultural Workers Union (supra). This Court, in the Kenya Tea Growers case (supra), quoted the case of TSC vs KNUT (supra) and highlighted the of essence of a CBA, that:

"The terms and conditions therein are voluntarily agreed upon between the employer and the union."

22. The issue presented before us was discussed in the Kenya Tea Growers case (supra), where this Court posed:

"What happens when the employer or employer's organization and the union are unable to agree on the terms of such CBA? What role, if any, does the ELRC play in such circumstances?"



23. In answering this question, this Court stated at paragraph 46 of the decision, guided by section 26 of the Employment Act, that:

“We find that the above provision not only allow parties to a CBA to agree on terms that are more favourable than the minimum terms and condition of employment set out by the Employment Act and Wages Order but also empowers the ELRC to issue such favourable terms.”

24. This answers the appellant’s issue herein on whether the court has jurisdiction to arbitrate on the terms of a CBA. Indeed, as was held by this Court above, the Court is clothed with such jurisdiction. We find that the trial court erred in holding that the court cannot descend in the arena of negotiations of terms of employment at the work place or that it had no business settling the terms of the CBA.

25. In the Kenya Tea Growers case (supra) this Court went further to give limit to the exercise of the said jurisdiction at paragraph 47 of the decision that:

“... The power to do so by ELRC ought to be exercised judiciously and on such case by case basis where parties are unable to agree on the terms of a CBA. The court should ensure it does not substitute its preference with that of the parties’ freedom to agree on the terms of employment. The court ought to be guided by the Wage Guidelines issued by the government.”

26. With the above caution on the exercise of jurisdiction by the ELRC over the determination of the CBA, what we need to ponder now is whether the appellant’s case was fitting within the brackets for determination by court? We note this Court’s finding in the Kenya Tea Growers case is that the court should be guided by the Wage guidelines issued by the Government. Further, the court re-considered documentary evidence that had been produced by parties during the trial in resolving the stalemate on the terms of the CBA. In our case, the seven (7) contested clauses were not issues for trial during hearing, the same came up after judgment. As such, we find that the trial court did not err when it found that the ELRC became functus officio after judgment had been pronounced and thus it could not reconsider the issues. We add that the determination of the seven (7) contested issues required evidence to be produced which could not be done after judgment. Thus, we find that the ELRC did not err in holding that the matter was settled by the judgment of the ELRC and any other issue should undergo the procedure laid down in settling the same.

27. The upshot is that this appeal lacks merit and is hereby dismissed with costs to the respondent.

28. It is so ordered.

**DATED AND DELIVERED AT NYERI THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**W. KARANJA**

.....  
**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

.....  
**JUDGE OF APPEAL**

**L. KIMARU**

.....



**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

Deputy Registrar

