Bakery Confectionery Food Manufacturing & Allied Workers Union (K) v Brava Food Industries Limited (Cause E899 of 2022) [2025] KEELRC 72 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEELRC 72 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E899 OF 2022

L NDOLO, J

JANUARY 23, 2025

BETWEEN

BAKERY CONFECTIONERY FOOD MANUFACTURING & ALLIED WORKERS UNION (K) ..... CLAIMANT

AND

BRAVA FOOD INDUSTRIES LIMITED ..... RESPONDENT

RULING

1. By my judgment delivered on 24th October 2024, I directed the parties to negotiate, conclude and present a duly executed Collective Bargaining Agreement (CBA) for registration by the Court, within 30 days from the date of the judgment.

2. Thereafter, the Respondent moved the Court by way of Notice of Motion dated 20th November 2024, seeking orders to set aside, review and/or vary the judgment.

3. The Motion is supported by an affidavit sworn by the Respondent's General Manager, Osman Abdi Salat and is based on the following grounds:

    a. That on 24th October 2024, the Court delivered a judgment in favour of the Claimant, directing the Respondent to conclude negotiation of a CBA, within a period of 30 days from the date of the judgment;

    b. That the Respondent has always been willing to engage the Union; however, the Claimant Union has lost its simple majority representation of the Respondent's workforce and consequently hindering further lawful and legitimate engagement and therefore the Court ought to have declined the Claimant's request;

    c. That at the time the judgment was delivered, there was no single employee of the Respondent, who was a member of the Union;

d. That the Respondent signed a Recognition Agreement with the Claimant, on 23rd June 2024; however, it was subsequently discovered that the Union did not enjoy a simple majority of the representation of the Respondent's workforce, as required under Section 54(1) of the *Labour Relations Act*;

e. That following the said discovery, the Respondent filed an application dated 9th July 2020 for revocation of the Recognition Agreement, which is pending before the National Labour Board. The Applicant made numerous requests to have the said application heard, without success;

f. That once a trade union loses the simple majority threshold, it ought to lose its recognition;

g. That it would be in the interest of justice that the judgment is reviewed because at the time it was delivered, the Union had lost all its members in the Respondent's workforce;

h. That the Court is empowered by *the Constitution* of Kenya, and Section 12 of the *Employment and Labour Relations Court Act* and the Employment and Labour Relations Court (Procedure) Rules, to grant the orders sought.

4. The Claimant filed Grounds of Opposition dated 3rd December 2024 stating as follows:

a. That the Respondent has not, on the face of the application, disclosed any known grounds upon which the Court can exercise its review powers to review and/or set aside its judgment, as provided by law;

b. That the application does not disclose or identify any mistake or error on the face of the judgment of this Court, it does not disclose or identify any discovery of new or important matter or evidence not within the Respondent's knowledge when the Court rendered the judgment, does not raise any sufficient grounds to warrant review or highlight any portion of the judgment that requires clarification;

c. That the application simply seeks to rehash arguments raised by the Respondent during trial, which were considered by this Court through its judgment;

d. That the application invites this Court to re-open the same matters that have conclusively been litigated and judgment rendered, thus inviting the Court to sit on appeal over its own decision, contrary to established principles of law;

e. That the application is an appeal disguised as a review application.

5. The Claimant also filed a replying affidavit sworn by its General Secretary, Danchael Mwangure on 3rd December 2024, reiterating that by its application, the Respondent is inviting the Court to undertake a merit review of its judgment.

6. Mwangure terms the application as an abuse of the court process. He accuses the Respondent of bad faith, stating that as soon as it filed the application, it abandoned the negotiating table, without proffering any counter-proposals for negotiation of a CBA, as directed by the Court.

7. Mwangure concludes that the Respondent is in contempt of the order of the Court as the 30-day window period within which to negotiate, conclude and sign a CBA had lapsed.

8. The power of this Court to review its own decisions is donated by Section 16 of the *Employment and Labour Relations Court Act* and Rule 74 of the Employment and Labour Relations Court (Procedure) Rules. Rule 74(1) provides as follows:

1. A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling-

    a. if there is discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or

    b. on account of some mistake or error apparent on the face of the record; or

    (c) if the judgment or ruling requires clarification; or

    (d) for any other sufficient reason.

9. In its written submissions dated 10th December 2024, the Claimant refers to the decision in Republic v Advocates Disciplinary Tribunal Ex Parte Apollo Mboya [2019] KEHC 6379 (KLR) where Mativo J (as he then was) stated as follows:

> " Review is impermissible without a glaring omission, evident mistake or similar ominous error. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by an order for review."

10. In its application, the Respondent does not identify the specific ground upon which it seeks review. More significantly, a reading of the application reveals that what the Respondent asks the Court to do is to re-open the case and render a different verdict. The Court has no such powers and with much respect, I find that this application is an abuse of the court process. I therefore proceed to dismiss it with costs to the Claimant.

11. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF JANUARY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Amalemba for the Claimant

Mr. Lesargor for the Respondent