



**Kenya Union of Commercial Food and Allied Workers v Kenya Meat Commission
(Cause 549 of 2013) [2025] KEELRC 110 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 110 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 549 OF 2013
MA ONYANGO, J
JANUARY 23, 2025**

BETWEEN

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS CLAIMANT**

AND

KENYA MEAT COMMISSION RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* and is mandated in its constitution under Rule No. 5 to represent employees in the commercial and food sector.
2. The Respondent is a statutory body of the Republic of Kenya, established in 1950 and whose objective is promoting the meat industry and complimenting Government efforts in economic recovery in the sector.
3. By virtue of its constitution the employees of the Respondent fall within the purview of the Claimant's membership and it is the right union to represent the employees of the Respondent in labour matters.
4. The Claimant and Respondent have a valid and subsisting recognition agreement and have negotiated several collective bargaining agreements (CBAs). The last CBA was for the period commencing 1st July, 2010 and was valid for two (2) years.
5. Clause 3 of the CBA provided that the CBA would continue in force until amended by both parties and that the terms of the agreement were subject to any relative legislation enacted during its duration, which may necessitate alteration or amendment to the CBA.
6. The parties were in the process of reviewing that CBA when they reached a deadlock. The Claimant union reported a trade dispute to the Minister for Labour and Human Resource Development by letter dated 8th August, 2012 as provided under section 62 of the *Labour Relations Act*. A conciliator



was appointed but the parties were still not able to agree. The Conciliator issued a certificate to refer the dispute to this court dated 13th March 2013 in accordance with section 69 of the [Labour Relations Act](#) which paved the way for the institution of this suit.

7. The Memorandum of Claim herein is dated 17th April 2013 and was filed by the Claimant in court on 19th April 2013, following deadlock in negotiations for CBA for the period 1st July 2012 to 30th June, 2014.
8. On 20th March, 2014 Lady Justice Ndolo referred the dispute to Central Planning and Monitoring Unit (CPMU) of the Ministry of Labour for an economic report this being an economic dispute. The CPMU prepared and filed its report on 18th December 2014. The dispute was mentioned severally thereafter with a view to recording settlement but this did not materialize leading to the court directing the parties to file submissions to enable the court decide the matter.
9. In a judgment delivered on 13th July 2018 by Hon. Justice Abuodha J. N. the suit was struck out on grounds of jurisdiction and the court directed that the CBA concerned, if still necessary, be negotiated with the input of Salaries and Remuneration Commission (SRC) as the Respondent is a state corporation and employs public servants in its service whose remuneration had to be set in consultation with SRC.
10. The Claimant Union sought for review of the judgement through an Application dated 24th July 2018 wherein the court, in its Ruling dated 18th October 2019, set aside the impugned judgement and directed that the Respondent submits to SRC the Union's proposals and counter offers including agreed clauses and parties' positions on outstanding clauses for the Commission's input and for the Commission to give advice on the same.
11. What therefore is before this court is the Memorandum of Claim seeking orders that this court:
 - a. Grant the proposals put forward by the Claimant herein from paragraphs 18 to 29 of this memorandum of claim.
 - b. Orders the Respondent to meet the costs of this dispute.
12. The Claimant submits that it has a valid Recognition Agreement pursuant to which the first Collective Bargaining Agreement was concluded and came into effect on 1st July 2010. That this CBA was set to expire on 30th June 2012 and the Claimant forwarded proposals for its review on 11th May 2012.
13. The Claimant further avows that on 26th October 2012, it received the Respondent's counter offer and both parties met on several dates where a number of proposals were agreed on while some were not.
14. That on 8th August 2012, the Claimant reported a trade dispute and a conciliator was appointed. The conciliator convened meetings where parties met on their own and further agreed on more clauses. A deadlock was reached on clauses in respect of house allowance, acting allowance, leave allowance, minimum basic rates of pay, general wage increase, medical benefits, transfers, commuter allowance, canteen, special allowance for drivers and freezers and gratuity.

Respondent's Case

15. The Respondent filed a Memorandum of Response dated 20th May 2013 in opposition to the Memorandum of Claim in which the Respondent avers that any tangible negotiations failed as a result of the unreasonable and unsubstantiated demands by the Claimant as it had conducted itself in an irrational and emotional manner devoid of any consideration of the Respondent's economic status.



16. It further avers that the Claimant did not proffer any reasonable, legal and/or economic justification for the demands of increased benefits. That the increment demands are so steep that they create an inference of unreasonableness and are therefore unwarranted. That additionally, there has been no sudden improvement in the Respondent's economic activity nor to the national economic activity to warrant a sudden increase on salary, allowances and wages to the Claimant's members.
17. The Respondent states that the demands for a minimum pay increment is unlawful and illegal as the minimum wages are set by the National Government and it is not obligated to concede to any minimum wage over and above the statutory limits set by the Government.
18. The Respondent further submits that the new allowances demanded are neither based on any improved productivity of the Claimant's members nor proportionate increase in the cost of living and that a grant of these prayers would occasion to it great economic hardship which could lead to its collapse to the detriment of its employees.
19. In conclusion, the Respondent avers that the Claimant has not come to court with clean hands and its demands are outrageous and the suit should therefore be dismissed with costs.

SRC's Report

20. In its report dated 2nd June 2022, the SRC observed that the implementation of the Respondent's proposals as contained in the CBA between itself and the Claimant will result in an annual increase in the wage bill of KES. 24,366,079.
21. That a further assessment of the factors to consider indicates that the Respondent has been realizing losses from operations for the Financial Year 2016/17 and is therefore not in a position to afford any review in remuneration. Secondly, the Respondent, being a State Corporation has been relying mainly on government grant ranging from 63% to 93.8% during the period under review. That in addition, the Auditor General gave a disclaimer Audit Opinion on all financial statements audited which mean they cannot be relied upon to make a decision on the company. Lastly, it states that the rates sought do not align with the PSC Human Resources Policies and Procedure Manual. In totality, it stated that the Respondent has not met the factors for consideration.

Claimant's Submissions

22. In response to SRC's report, the Claimant submitted that unionisable employees of the Respondent do not hold public office whose remuneration and benefits should fall under the purview, advice and guidance of the Commission. That it is therefore unnecessary for SRC to intervene and purport to offer any advice on the matter.
23. The Claimant further submitted that when it comes to cost implications, however bad the business situation has been, the employees still provided their labour and they were not spared from the effects of the high cost of living which require salary rise and improved allowances to cushion the said employees.

Respondent's Submissions

24. The Respondent submitted that by seeking to involve the court in the negotiations of the CBA, the Claimant is abusing the court process by attempting to mislead the court into forcing clauses of the intended CBA on it. It referenced the case of Kenya Chemical & Allied Workers Union v Henkel Chemicals (E.A.) Limited (2015) eKLR to support its position.
25. Regarding the report by the SRC, the Respondent submitted that the Commission's recommendation to the effect that it relies mainly on Government grants for its operations and cannot afford any review



in remuneration as contained in the proposed CBA, especially for the period in question, is binding and that this court ought to rely on the same.

26. That consequently, where a CBA is to be concluded as between a Union and a public officer, the SRC advise must be sought prior to the registration of the CBA as was held in *Moi Teaching and Referral Hospital Board v Kenya National Union of Nurses (2016) eKLR*.
27. In conclusion, it urged the court not to allow the prayers sought by the claimant since the result would be a CBA that has been concluded without the input/advise of the SRC as was held in the Court of Appeal decision in *Teachers Service Commission vs Kenya Union of Teachers & 3 Others (2015) eKLR*.

SRC's Submissions

28. The commission submitted that it has a constitutional mandate to advice on remuneration and benefits of public officers and statutory mandate to inquire into and advise on any remuneration and benefits to be paid out of public funds.
29. Regarding the submission by the Claimant on whether unionisable employees of the Respondent are public officers, SRC maintained that the manner in which the Respondent is established, its mandate, composition and manner of appointment conforms to the provisions of Section 3 of the State Corporation Act and as such, makes it a public entity and part of the public service as defined under Article 260 of *the Constitution* of Kenya.
30. That despite the allegations that the Respondent generates its own money, the money is public money as defined in Section 2 of the *Exchequer and Audit Act* and has to be used in accordance with the principles set by the National Treasury.
31. With respect to the employees of State Corporations being public officers, the commission relied on the case of *Kenya Union of Domestic Hotels Education and Allied Workers v Salaries and Remuneration Commission (2014) eKLR* where the court determined they fall under the public officer title.

Analysis and Determination

32. Having considered the pleadings, the CPMU and SRC reports, the documents filed and submissions by all the parties including SRC, the issues arising for determination are the following:
 - a. Whether the review of this CBA is subject to advice of the SRC;
 - b. Whether the Claimant is entitled to the remedies sought in the claim.
33. The Respondent raised some peripheral issues which, although not part of the dispute, require this court's pronouncements. The Respondent questioned whether the demands of the Claimant are legal and reasonable and to what extent the court can be involved in the negotiations.
34. According to the Respondent it is only bound to implement statutory minimum rates and is not obligated to concede to any demand over and above the said statutory minimum rates.
35. On the issue of the court's involvement in negotiations the Respondent submits that it is an abuse of court process and that the Claimant is trying to mislead the court into forcing the clauses on the Respondent. That according to Article 41(5) of *the Constitution* only parties to the CBA can be



involved in the negotiations. The Respondent relied on the decision in *Kenya Chemical & Allied Workers Union v Henkel Chemicals (EA) Limited* [2015] eKLR where the court stated as follows:

“To do this is to ask this court to descend in the arena of sitting in the parties boardrooms and telling the employer and the employees what to do or not do. How then will the court sit again and register a negotiated Collective Bargaining Agreement having been part of the boardroom negotiations. How will this court adjudicate in any dispute where the Collective Bargaining Agreement has been challenged? This is tantamount to being a Judge in your own cause.

I declined to the parties proposals and insisted that they must agree on the unresolved issue. This is the position of this court even today that parties should be allowed to freely negotiate contents of a Collective Bargaining Agreement. However where it is apparent that one party is taking a hard line stand, the best the court can do is to have minimum supervision of the negotiation by for instance setting timeline within which they must conclude the negotiation.”

36. Section 48 of the *Labour Institutions Act* provides as follows:

48. Wages Order to constitute minimum terms of conditions of employment

- (1) Notwithstanding anything contained in this Act or any other written law—
 - a. the minimum rates of remuneration or conditions of employment established in a wages order constitute a term of employment of any employee to whom the wages order applies and may not be varied by agreement;
 - b. if the contract of an employee to whom a wages order applies provides for the payment of less remuneration than the statutory minimum remuneration, or does not provide for the conditions of employment prescribed in a wages regulation order or provides for less favourable conditions of employment, then the remuneration and conditions of employment established by the wages order shall be inserted in the contract in substitution for those terms.
- (2) An employer who fails to—
 - a. pay to an employee to whom a wages regulation order applies at least the statutory minimum remuneration; or
 - b. provide an employee with the conditions of employment prescribed in the order, commits an offence.
- (3) If an employer is found guilty of an offence under subsection (2), the court may in addition to any other penalty order the employer to pay the employee the difference between the amount which ought to have been paid in terms of the wages order and the amount which was actually paid.
- (4) Where proceedings are brought under subsection (2) in respect of an offence consisting of a failure to pay remuneration at the statutory minimum remuneration or to provide an employee with the conditions of employment prescribed in the order, then—
 - a. if an employer is found guilty of the offence, evidence may be given of any like contravention on the part of the employer in respect of any period during the twelve months immediately preceding the date of the offence; and



- b. on proof of such contravention, the court may order the employer to pay the difference between the amount which ought to have been paid during that period to the employee by way of remuneration and the amount actually paid:

Provided that evidence shall not be given under paragraph (a) unless notice of intention to give such evidence has been served upon the employer together with the summons, warrant, information or complaint.

- (5) The powers given by this section for the recovery of sums due from an employer to an employee shall be in addition to and not in derogation of any right to recover such sums by civil proceedings:

Provided that no person shall be liable to pay twice in respect of the same cause of action.

37. Section 26 of the *Employment Act* further provides as follows:

26. Basic minimum conditions of employment

1. The provisions of this Part and Part VI shall constitute basic minimum terms and conditions of contract of service.
2. Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee than the terms provided in this Part and Part VI, then such favourable terms and conditions of service shall apply.

38. Section 15 of the *Employment and Labour Relations Court Act* provides at subsections 5 and 6 that the court is bound by wages guidelines on minimum wages and standards of employment, and other terms and conditions of employment that may be issued, from time to time, by the Cabinet Secretary for the time being responsible for finance and that the court may make reference to SRC guidelines where relevant to the suit.

39. When all these provisions are read together, they point to the power of the court to make determination on wages and terms and conditions of employment whenever such disputes are brought before it. This means that the court has jurisdiction to make determinations on wages and other terms and conditions of service, hence the legislative guides to the court.

40. This therefore means that trade unions can make demands on employers which are subjected to negotiations and should parties not agree, the court is empowered to determine such disputes within the guidelines in the legislation. The Claimant was therefore within its rights to make the demands it made to the Respondent and because *the Constitution* and legislation provide for negotiations, the Respondent is under obligation to negotiate with the union. It is however not bound to accept whatever demands are made by the union and has a right to give its counter offers.

41. The CPMU makes a technical evaluation of the demands/proposals of the union and the counter demands/offers by the Respondent and advises the court on the economic implications as well as the guidelines for determination of such economic disputes.

42. The Respondent's position that the court cannot or should not be involved in negotiations and that it has no obligation to pay more than statutory minimum rates is thus not in conformity with the law.



43. The suit herein concerns review of terms and conditions of service. In other words, it is an economic dispute.
44. Section 15 of the *Employment and Labour Relations Court Act* provides that:
- (5) In the exercise of its powers under this Act, the Court may be bound by the national wage guidelines on minimum wages and standards of employment, and other terms and conditions of employment that may be issued, from time to time, by the Cabinet Secretary for the time being responsible for finance.
- (6) Nothing in this section shall preclude the Court from making reference to the guidelines as may be published from time to time by the Salaries and Remuneration Commission to the extent to which they may be relevant to the dispute.
45. The court is thus bound by the Wages Guidelines and is also obligated to consider the guidelines of SRC whenever dealing with a government entity.
46. In the instant case the CBA that is the subject of dispute is for the period 1st July, 2012 to 30th June 2014. It is not possible that the employees are still earning the same wages which would have been overtaken by the statutory minimum wages that are reviewed periodically and have been reviewed severally over the period.
47. The parameters that were used by CPMU in its report are also outdated. On the other hand the submissions of the SRC which were based on circumstances long after the duration covered by the CBA are also not helpful to the court in determining the instant dispute.
48. It is the view of this court that it would be foolhardy to require the parties to negotiate several CBAs to cover the period 2014 to 2025, a duration of more than 10 years. In the court's view what is practical is to bring the parties to a level where they can negotiate a CBA for the current period.
49. In bringing the parties up-to-date it is important to consider how the cost of living has changed over time from 1st July, 2010 when the last CBA commenced.
50. A good indicator is the statutory basic minimum wage which was Kshs. 6,743 for cities, Kshs. 6,221 for municipalities and Kshs. 3,597 for all other areas. In 2024 the rates were Kshs. 16,113.75; 14,866.92 and 8596.494 respectively, a cumulative increase of 139%.
51. In contrast, the parties CBA provided for basic minimum rates as follows:
- Grade 10 - 8,925
- Grade 9 - 9,975
- Grade 8 - 15,750
- Grade 7 - 18,900
52. Looked at another way, the Respondent's minimum wages at that time were 32.36% above statutory minimum rates of pay.
53. Applying the same percentage increase of 139% as the rise in the minimum rates or 32.36% above current statutory minimum rates would in my view be the most realistic and objective option. Going by the percentage rise in minimum rates of 139% over the period, these rates should have risen to at least the following rates
- Grade 10 - 21,330.75



Grade 9 - 23,840.25

Grade 8 - 37,642.00

Grade 7 - 45,171.00

54. The alternative is to apply 32.36% above current statutory minimum rates of pay. This is however not possible for the court to postulate as the court does not have the benefit of what is currently being paid by the Respondent as basic minimum rates of pay for the various grades.
55. The court has further noted the CBA for the for the period 1st July 2010 to 30th June, 2014 did not indicate which jobs belonged to the grades, which was a serious omission by the parties. A CBA should always contain the jobs in each grade as a guide to any person reading the same. It should indicate the categories of employees in each grade as agreed by the parties.
56. For purposes of bringing the parties to the current position the court proposes that each employee in the unionisable grades 10, 9, 8 and 7 who are currently earning below the statutory minimum wage for cities be brought to the current minimum wage for cities and then be awarded a wage increase of 10% while whose basic salary is above the statutory minimum wage are awarded a 10% increase on what they are currently earning.
57. The court awards the following on all other Clauses:
- Clause 1 - Preamble
 - retain
 - Clause 2 - Application
 - retain
 - Clause 3 – Effective date and duration
 - 1st July, 2024 to 30th June 2025
 - Clause 4 - Rules
 - retain
 - Clause 5 - Appointments
 - retain
 - Clause 6 – Working Hours
 - Retain 6.1 – Hours of Work
 - Retain
 - 6.2 - Overtime
 - Retain
 - 6.3 - Night Shift Allowance
 - Increase the rate in the CBA from Kshs. 80 to Kshs. 200
 - Clause 7 - Holidays
 - Retain
 - Clause 8 - Allowances



8.1 - House Allowance

CBA New Rate

Grade 10 - 4300 8600

Grade 9 - 4800 9600

Grade 8 - 6000 12000

Grade 7 - 7000 14000

8.2 - Subsistence Allowance

Rates currently being paid by the Respondent to continue

Clause 9 - Remuneration

9.1 - Minimum Basic Rates of Pay

2024 statutory minimum rates of pay to be increased by 10%

9.2 Wages Increase

Each employee be brought to the minimum rate in 9.1 then be awarded a further 10% increase to cover all the years up to 30th June 2024

9.3 - Payment of wages

Retain

9.4 – Long Service

Retain

Clause 10 - Leave

Retain

Clause 11 - Medical Treatment

11.1 - Medical Examination

Retain

11.2 - Medical Benefit

(a) In-Patient Kshs. 100,000

(b) Out-Patient Kshs. 50,000

11.3 - Occupational Health and Safety

Retain

11.4 - Risk Management

Retain

Clause 12 - Transfers

Retain

Clause 13 - Termination of Service

retain



Clause 14 - Retirement

Retain

Clause 15 - Gratuity

Retain

Clause 16 - Redundancy

retain

Clause 17 - Discipline

Retain

Clause 18 - Uniform and Protective Clothing

retain

Clause 19 – Certificate of Service

Retain

Clause 20 - Translation

Retain

58. New Clauses

- i. Computer allowance
- ii. Canteen
- iii. Special allowance for drivers and employees working in freezers

All new clauses to be considered at the next negotiations.

59. The parties are directed to immediately embark on the negotiation of the next CBA to commence on 1st July, 2025.

60. Each party shall bear its costs.

DATED, DELIVERED VIRTUALLY AT ELDORET THIS 23RD DAY OF JANUARY, 2025.

M. ONYANGO

JUDGE

