



**Kudheiha Workers v Bom Dr Babla Diani Girls Secondary School (Cause E090 of 2024) [2025] KEELRC 69 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 69 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E090 OF 2024  
M MBARŪ, J  
JANUARY 23, 2025**

**BETWEEN**

**KUDHEIHA WORKERS ..... CLAIMANT**

**AND**

**BOM DR BABLA DIANI GIRLS SECONDARY SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The issue in dispute is the respondent's refusal to commence, negotiate, conclude, and implement the collective bargaining agreement.
2. The respondent did not enter an appearance despite being served with a summons and notice.  
The parties have a Recognition Agreement signed on 15 November 2013.
3. The claimant commenced collective bargaining (CBA) with the respondent who has refused to engage. The claimant forwarded the new cycle of CBA with proposals to the respondent but instead, the respondent dismissed the claimant and denied them access to the premises. The respondent also commenced acts of harassment, and victimization of the claimant's members on the basis that they are involved in union activities.
4. The claim is that under the *Labour Relations Act*, the claimant is entitled to engage in a new cycle of CBA upon the lapse of the current one but the respondent has declined to negotiate. This is contrary to the law, articles 27, 36 and 41 of *the constitution* and ILO Convention No.87.

The claim is for;

- a. The court to direct the respondent to commence negotiations of the CBA without delay;
- b. The respondent to continue deductions and remission of union dues concerning unionisable members recruited by the claimant;



- c. Costs of the suit.
5. The claimant called Francis Omondi, the Secretary of Kwale County, who has engaged the respondent for and on behalf of the claimant. He testified that despite the parties having a Recognition Agreement, the respondent has refused to engage in and conclude a CBA. Instead, all unionized employees who have agitated for a new CBA have been victimized. The shop steward was dismissed, and the secretary was moved to a new department.
6. Mr Omondi testified that he had engaged the school principal and the chairperson of the board and sent the CBA proposals, but they refused to negotiate. He reported the matter to the Labour Office, which stated that there was no Recognition Agreement, but this is not correct, as the same exists. Unless the orders sought are issued, the claimant's members on the shop floor will suffer loss and damage. The respondent will continue to dismiss any employee who engages in union activities contrary to the law.
- At the close of the hearing, the claimant filed written submissions.

### Determination

7. The single issue for determination is whether the Court should direct the respondent to negotiate, conclude, and implement the CBA.
8. The respondent's failure and refusal to attend Court are regrettable. This denies the court crucial evidence and material in a dispute that would ordinarily be amicably resolved through the mechanism allowed under the *Labour Relations Act* (LRA).
- The claimant has filed the Recognition Agreement with the respondent.
9. Under the LRA, the claimant can commence CBA negotiations upon recognition by the respondent.
10. The claimant served the respondent with a draft CBA attached to the Memorandum of Claim but has refused to share any counterproposals or execute the same. Such denies the claimant and its members negotiated terms and conditions of service under the Recognition Agreement. This contradicts Article 41 of *the Constitution*, which allows unionized employees to engage the employer and put a CBA in place.
- Article 41(5) of *the Constitution* gives the right;
- (5) Every trade union, employer organisation, and employer has the right to engage in collective bargaining.
11. The respondent's refusal to engage the claimant in signing a CBA is a violation of *the Constitution* and the LRA. This refusal and failure are tantamount to negating the Recognition Agreement, which is sacrosanct and binding.
- The orders sought by the claimant are justified.
12. The respondent is given thirty (30) days to engage the claimant and commence, negotiate, and conclude a CBA.
13. The implementation aspect shall only arise upon the registration of the CBA with the Court. However, for the unionised members of the claimant employed by the respondent, union dues shall be remitted from the date the respondent was served with check-off forms. The claimant has not indicated the date of the check-off forms.



14. Before conclusion, the claimant urged the Court that its members in the respondent's service are being victimized and harassed for engaging in union activities. The chairperson was dismissed, while the secretary was moved to the library to ensure that they stopped union activities.
15. One of the protected rights under *the Constitution* and Bill of Rights is fair labour practices. No unionised employee should be victimized, harassed or discriminated against based on union activities. Article 41(2)(c) of *the Constitution* gives the right to;
  - (c) to form, join or participate in the activities and programmes of a trade union; and
16. Under Section 46 of the *Employment Act*, employees are secured when they engage in lawful union activities. Section 46 protects union officials and lawful shop floor activities.
17. In this regard, where the claimant's chairperson has been dismissed by the respondent for lawful union activities, the matter should be addressed within the laid-down procedures. Where the secretary has been moved from one department to the other to stop union activities, it should be administratively addressed before escalation.
18. The Court brings to the attention of the respondent the provisions of Section 46(h) of the *Employment Act*;
  - (h) an employee's initiation or proposed initiation of a complaint or other legal proceedings against his employer, except where the complaint is shown to be irresponsible and without foundation or ...
19. In this regard, the claim is found with merit, and the following orders are hereby issued;
  - a. The respondent is given thirty (30) days to engage the claimant and commence, negotiate, and conclude a CBA.
  - b. Parties are to report back to the Court on 24 February 2025;
  - c. Where the respondent fails to comply as (a) above, the Deputy Registrar and the Labour Officer shall execute the CBA for and on behalf of the respondent within the next 45 days;
  - d. The claimant shall serve the State Counsel responsible for Kwale County with the judgment herein;
  - e. The respondent is to meet the claimant's costs assessed at ksh.50, 000.

Orders accordingly.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 23 DAY OF JANUARY 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

