



Kenya Engineering Workers Union v Engineering Supplies Limited (Cause E006 of 2024) [2025] KEELRC 447 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 447 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E006 OF 2024
M MBARÚ, J
FEBRUARY 20, 2025**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
ENGINEERING SUPPLIES LIMITED RESPONDENT**

JUDGMENT

1. The issue in dispute is the respondent's refusal to review the CBA on general increment, basic minimum wage, house allowance, leave travelling allowance, safari allowance, sick leave, redundancy benefits, maternity leave/paternity leave, death of an employee, effective date and duration.
2. The parties have a Recognition Agreement and an ongoing collective agreement (CBA) dated 21 October 2022.
3. The claim is that the respondent has refused to review the CBA and the issues in dispute. In line with clause 29 of the CBA, the claimant forwarded a draft CBA with proposals to the respondent, but the respondent refused to send a counterproposal.
4. The claimant reported a dispute to the Minister, and the parties were invited to conciliation on 20 January 2022. The respondent diverted the issue from CBA negotiations to the challenge of the Recognition Agreement on the allegations that there was no simple majority.
5. The claim is that the issue has not been resolved;
 - a. The basic minimum wage which the claimant have proposed a 15% increase for 1st year and a further 15% of the current Wage Orders wage increase.
 - b. House allowance is proposed at Ksh.5, 000 or 30% of the basic salary whichever is higher considering the housing where the respondent is located. In the alternative, the respondent to lease houses for its employees to address accommodation needs and reduce the costs.



- c. On leave travelling allowance and safari allowances, the current provision is below market prices compared to other companies in the sector.
 - d. Death of an employee is proposed at Ksh.50, 000 for funeral expenses which are reasonable compared to other CBA in the sector.
6. The claim is that the current CBA lapsed on 27 February 2013 without renewal. The proposed amendment date would have been 1 March 2013 but the claimant has reasonably proposed for the effective date as 1 March 2020. The other clauses of the CBA can be retained as proposed by the claimant.
7. The claimant is therefore seeking that;
 - a. The court deems fit and finds the action of the respondent herein for refusal to negotiate/ review the outgoing CBA is in bad faith and unlawful.
 - b. The court deems fit and adopts the proposal filed in court by the claimant and Orders the parties herein to sign the same within the prescribed time.
 - c. The costs of this suit be met by the respondent.
 - d. Any other reliefs the court deems fit to grant.
8. The claim is supported by Wycliffe Nyamwata the general secretary of the claimant.
9. In evidence, the claimant called Francis Jirongo, the secretary of the Coast region for the claimant, who testified that despite the parties having a Recognition Agreement, the respondent has refused to negotiate a new CBA. The initial CBA was signed in 2011 and lapsed in 2013. The claimant sent its proposals covering all unionisable employees, but when parties attended before the conciliator, the respondent converted the dispute into questioning the number of unionised employees. The respondent has also challenged the Recognition Agreement. The claimant has registered another CBA in the sector where the terms and conditions of employment have been enhanced, but in this instance, the respondent has refused to sign the CBA. The orders sought in the claim should be granted with costs.
10. Upon cross-examination, Jirongo testified that the CBA is a voluntary agreement between the parties and, upon registration, is binding. The CBA has a termination clause, and the effective date is 1 March 2012. The CBA is valid for 2 years and will remain in force until a new CBA is registered or terminated. The CBA allows for its termination upon notice, but the procedures for its termination are not set out.
11. Jirongo testified that the respondent issued the claimant a notice dated 20 November 2019 to terminate all agreements with the claimant. It sought to terminate the CBA. In this case, the respondent is not willing to negotiate the CBA.
12. In response, the respondent argues that, through a letter dated 30 November 2019, it invoked clause 29 of the CBA and terminated all existing agreements. As a consequence, the CBA ceased to be in force.
13. The CBA was terminated by the respondent according to its terms long before the claimant proposed to have it reviewed.
14. The response is that the parties entered the CBA on 28 October 2011, effective 1 March 2011. It was a term of the CBA to be in force for two years and thereafter remain in force until amended or terminated by either party, giving one month's notice.



15. Upon the respondent's last union member, James Kuria's retirement, in November 2019, the respondent paid off all his dues per the CBA and proceeded to invoke the termination clause. Notice was issued to the claimant on 30 November 2019 and forwarded to James Kuria's terminal dues. Despite the revocation of the CBA, the claimant began persistently harassing the respondent to amend and sign a new CBA.
16. The events proceeding with the meeting with the conciliator arose because there was no valid CBA. The claimant ought to have recruited members before pursuing a new CBA.
17. The respondent pays its employees above the minimum wage provided under the General Orders, and the proposal to increase all salaries by 15% and a further 15% is unjustified and beyond the respondent's capacity.
18. The wages paid include a house allowance as provided under the law. The respondent's offices are on Jomo Kenyatta Avenue, and the claimant's proposal to lease accommodation for its members is not justified.
19. The introduction of leave travelling and safari allowances is unnecessary and without justification. This proposal is beyond the respondent's capacity.
20. Clause 29 of the CBA provided that the same would be valid for 2 years and, thereafter, remain in force until amended or terminated by either party through written notice. The respondent invoked its right and issued notice to terminate the CBA. There exists no CBA upon which the orders sought by the claimant can be granted, and the same should be dismissed with costs.
21. In evidence, the respondent called Sanjay Pandya, the managing director, who testified that the CBA was effective from 1st March 2011 for 2 years, a period that lapsed without renewal. It allowed either party to issue notice to amend, review or terminate, which the respondent did through a notice dated 30 November 2019. It notified the claimant of the termination of all agreements after the last union member, James Kuria, retired. The claimant does not have any other members employed by the respondent.
22. Upon the notice dated 30 November 2019, the claimant only acknowledged receipt of the terminal dues for its last member, James Kuria, but did not respond to the termination of the CBA.
23. Sanjay testified that on 15 March 2020, the respondent wrote to the National Labour Board seeking revocation of the CBA under Section 54(5) of the *Labour Relations Act* (LRA). Despite the notice to revoke the CBA, the claimant has persisted with its demands and complaints against the respondent, which has led to harassment.
24. When the respondent was served with the proposal to amend the CBA, the response was that there was no CBA subject to amendments upon the notice to terminate the last CBA in 2019. During conciliation, the claimant remained adamant without a resolution. The claimant has since instituted other suits, ELRC Cause E085 of 2021 and ELRC Cause E073 of 2021, both of which question the existence of a valid CBA. These suits are pending determination.
25. Sanjay testified that the respondent has paid all its employees above the minimum wage, and the claimant's proposals of a 15% increase are beyond its capacity. The wages paid are above the minimum, inclusive of a house allowance. No CBA exists between the parties to allow for a review or orders sought by the claimant.
26. Manisha Pandya testified that he is a director of the respondent and that the orders sought are not justified. In 2011, the respondent signed the CBA but was unaware it was registered with the court.



- The claim that the respondent has refused to sign a new CVA is not correct since there is no CBA between the parties, having revoked it in 2019 through written notice as agreed by the parties. The respondent was unaware that a third party was to terminate the CBA.
27. Manisha testified that the respondent has no unionisable employees or members of the claimant upon whom a CBA should be negotiated. The last member of the claimant retired in 2019, and since then, the claimant has not recruited new members to justify the claim herein. The last CBA provided for its termination, which the respondent invoked.
 28. At the hearing's conclusion on 16 October 2024, the parties agreed to file written submissions by 18 November 2024.
 29. Only the claimant complied.
 30. The pleadings, evidence, and written submissions of the claimant are analysed, and the issues for determination are whether the court should allow the claimant's proposed CBA, whether the respondent should be directed to adopt and sign the proposed CBA, and who should pay costs.
 31. It is common cause that parties have a Recognition Agreement.
 32. The respondent wrote to the National Labour Board in a letter dated 15 March 2020 to revoke the Recognition Agreement. This process and letter were not concluded, and the respondent did not take further action.
 33. The Recognition Agreement remains in force.
 24. The purpose and foundation of the Recognition Agreement is to allow the parties to negotiate a CBA under Section 54 of the LRA.
 35. Section 54 of the *Labour Relations Act*, 2007 provides that;
 54. Recognition of trade union by employer
 - (1) An employer, including an employer in the public sector, shall recognise a trade union for collective bargaining if that trade union represents the simple majority of unionisable employees.
 - (2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.
 36. In the case of *Kenya County Government Workers Union v Nakuru County Government & Nakuru County Public Service Board* [2018] KEELRC 36 (KLR), the court recognized that once a trade union has achieved recognition, such binds the parties to engage and negotiate CBA. This position is affirmed in *Transport Workers Union versus Saudi Arabia Airlines* [2016] eKLR. The recognition is a legal process regulated under the LRA. Under Section 54(5), a party to the Recognition Agreement is bound until the National Labour Board revoke the agreement.
 37. In this case, parties negotiated a 2-year CBA effective 1 March 2011. It lapsed and was not renewed.
 38. Under the LRA, a CBA remains in force until a new one is amended and registered with the court. The process of registration with the court is to give it the legal force. Termination is, therefore, regulated in law.



39. Despite the notice issued by the respondent on 30 November 2019 seeking to terminate all agreements with the claimant upon the retirement and exit of the last member of the claimant, the CBA registered with the court stands. Under Section 59 of the LRA, which is binding, parties to it and the employment contracts are subject to the CBA terms. The CBA is enforceable and should be implemented upon registration until the Recognition Agreement is revoked by the National Labour Board as held in *Kenya Union of Commercial Food And Allied Workers v Kenya National Library Service* [2016] KEELRC 533 (KLR).
40. To allege the CBA is terminated without addressing its foundation, the Recognition Agreement is work in futility. The notice by the respondent dated 30 November 2019 terminating the CBA lacks the force of law and validity. Upon the CBA registration with the court, Sections 57(1) and 59(5) of the LRA took effect. With registration, the court gave the CBA its legal force for enforcement. The CBA 2011-2013 is binding on both parties.
41. However, the court recognizes that the workplace dynamic is changing. Employees come and go. The fluidity of human capital dictates that the parties to the Recognition Agreement remain engaged and address these changes. A mechanical application of a CBA would not address and factor in these changes.
42. The respondent's main contestation is that the claimant has no members in its establishment. The last member, James Kuria, retired in November 2019, and since then, the claimant has not recruited new members. This evidence was not challenged.
43. In the case of *Kenya Union Of Printing, Paper Manufacturers and Allied Workers versus Packaging Industries Limited & another* [2014] eKLR, that;
- Recognition is a right granted to the Trade Union to represent a defined collective bargaining unit. It rests on the strength of the collective bargaining unit. De-recognition of a Trade Union may, therefore, occur if the membership has changed and the Recognized Union no longer holds the simple majority.
44. Although, in this case, the court is dealing with the registration of a CBA, the proposals by the claimant are taken into account, and an essential element is lacking. The members of the claimant within the respondent establishment and their current wages for a comparative analysis based on the proposals for a new CBA are missing.
45. On the general wage, parties in the CBA agreed to a 12% increase in the basic wage from 31 December 2018 and a further 12% increase from 31 December 2019, subject to bringing those earning below the minimum wage to the proper wage.
46. These provisions in subsequent wage increases are fair and reasonable.
47. Regarding the house allowance, under clause 3 of the CBA, the parties agreed that the employer does not house the employees and, hence, earns a 30% house allowance based on the basic wage. This is a generous provision above the legal minimum of 15%. It should be retained.
48. Under clause 9 of the CBA, parties agreed to 26 leave days for the leave travelling allowance. Under Section 28 of the *Employment Act*, the minimum allowed is 21 days. The benefit of 4 extra days under the CBA quantified is fair and reasonable. The proposal for an allowance is factored in with extra days of rest.



- 49. Further, clause 13 of the CBA provides for Ksh.5, 200 for employees in groups I, II, III, and IV first year and Ksh.5, 400 second year. The benefit outlined coupled with the leave days in this regard should suffice.
- 50. The proposal is to pay Ksh.50, 000 for funeral expenses upon an employee's death. If the claimant establishes its number of representatives on the shop floor, this would form a good basis for future CBA negotiations.
- 51. On costs, the claim, as addressed above, has a good foundation; the respondent, under the mistaken belief that the CBA was terminated upon its notice dated 30 November 2019 is addressed above and should abide by the registered CBA. The terms remain effective until a new CBA is agreed and executed. The claimant, too, should return to the shop floor and establish its numbers. Collecting primary data on the shop floor should initiate a negotiation process. Application of other CBA from the sector will not resolve what does not exist on the shop floor. On this basis, parties are still bound under a valid Recognition Agreement and CBA; each should bear its costs.
- 52. To cover both parties, the court allows 90 days for the parties to renegotiate the current CBA with a conclusion. The County Labour Office will assist the parties in this regard. A report to the court will be necessary.
- 53. Accordingly, the claim is hereby allowed in the following terms;
 - a. The Recognition Agreement and CBA in force shall apply until renegotiated by the parties within the next 90 days;
 - b. Parties to report to the court accordingly on 20 May 2025;
 - c. The basic minimum wage is retained under clause (3) of the CBA with an increase of 12% of the basic wage;
 - d. House allowance is retained under clause (5) of the CBA at 30% of the basic wage;
 - e. Leave travel allowance is retained at ksh.5,400 under clause (13) of the CBA;
 - f. Other clauses as proposed to form the basis of (a) above;
 - g. Each party to bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 20TH DAY OF FEBRUARY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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