



Kenya Union of Domestic, Hotels, Betting, Educational Institutions and Hospital Workers (Workers) v Board of Management, Gombato Boys Secondary School (Cause E091 of 2024) [2025] KEELRC 450 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 450 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E091 OF 2024
M MBARŪ, J
FEBRUARY 20, 2025**

BETWEEN
**KENYA UNION OF DOMESTIC, HOTELS, BETTING, EDUCATIONAL
INSTITUTIONS AND HOSPITAL WORKERS (WORKERS) CLAIMANT**
AND
**BOARD OF MANAGEMENT, GOMBATO BOYS SECONDARY
SCHOOL RESPONDENT**

JUDGMENT

1. The issue in dispute is the respondent's refusal to commence, negotiate, conclude, and implement a collective bargaining agreement (CBA) with the claimant.
2. The claimant filed a Memorandum of Claim on 24 September 2024 and served the respondent. There has been no response or attendance. The claimant was heard on the matter in the respondent's absence.
3. The claim is that parties have a Recognition Agreement to negotiate a CBA under Section 54 of the *Labour Relations Act* (LRA). Parties have negotiated to improve employment terms and conditions, and the claimant forwarded a CBA proposal to the respondent. There is no response or counter-proposal. Despite the claimant engaging the respondent, no CBA has been concluded due to the respondent's inaction.
4. The claimant reported a trade dispute to the Minister, and parties held conciliations with directions to commence, negotiate, conclude, and implement a CBA. However, the respondent refused to comply, which led to this claim. This breaches Articles 36 and 41 of *the Constitution*, read together with Sections 54 and 57 of the LRA.

The claimant is seeking;



- a. That parties herein have satisfied the provisions under section 54(1) and (2) of the LRA;
 - b. Under section 57(1) of the LRA, the respondent is obliged to commence, negotiate, conclude, sign, and implement the CBA by itself or by its board and responsible officers.
 - c. The claimant and the respondent are to commence and negotiate a CBA.
 - d. The respondent is to continue deducting and remitting union dues for its unionisable members duly recruited by the claimant.
 - e. Costs be awarded to the claimant.
 - f. Any other remedy the court deems fit to grant.
5. In support of the claim, the claimant called Francis Omondi, the branch secretary of Kwale. He testified that he had engaged the respondent on behalf of the claimant on the proposed CBA based on the Recognition Agreement. The respondent has refused to execute the CBA despite the negotiations and the matter being placed before a conciliator. The unionisable employees and members of the claimant working for the respondent are disenfranchised by the respondent's actions to sign the CBA. The respondent has not demonstrated goodwill in addressing the negotiations, and the orders sought should be issued.
6. The claimant also filed written submissions and reiterated the claim, the provisions of Articles 36 and 41 of *the Constitution* and Sections 54 of the LRA.

Determination

7. Upon the employer's recognition of a trade union, the next logical and legal step is to engage in CBA negotiations under Section 54 of the LRA. The trade union is justified in proposing to the employer terms and conditions of employment for unionisable employees on the shop floor. Such a mandate is recognized under the law, and the court and the Court of Appeal make various decisions. See *Kenya Tea Growers Association v Kenya Plantation & Agricultural Workers Union* [2018] KECA 706 (KLR), where the court held that a CBA negotiation is the next logical step where the trade union has achieved recognition. In the case of *Micato Safaris v Kenya Game Hunting & Safari Workers Union* [2017] KECA 713 (KLR), the court emphasized Section 54 of the LRA provisions that;
- An employer, including an employer in the public sector, shall recognize a trade union for collective bargaining if that trade union represents the majority of unionisable employees.
8. These provisions apply to an employer in the public sector, such as the respondent herein.
9. In this case, the Recognition Agreement binds the respondent to negotiate and execute a CBA. The orders seeking orders compelling the respondent to negotiate and execute a CBA are with merit and justified on the given facts.
10. 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 March 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.

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

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

