



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Union of Commercial Food and Allied Workers v U-Fresh Enterprises Limited
(Cause E620 of 2022) [2025] KEELRC 406 (KLR) (12 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 406 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E620 OF 2022
JW KELI, J
FEBRUARY 12, 2025**

BETWEEN

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

AND

U-FRESH ENTERPRISES LIMITED RESPONDENT

JUDGMENT

1. The Kenya Union of Commercial, Food and Allied Workers, herein after referred to as the Claimant, is a registered trade union within the Laws of Kenya. U-Fresh Enterprises Limited, the Respondent herein, is a registered company under the laws of Kenya and is engaged in production and bottling of soft drinks. The union alleging refusal by the respondent to sign a negotiated Collective Bargaining [Agreement 2021/2023](#) filed a memorandum of claim dated 31st August 2022 seeking the following reliefs:-
 - a. The Honourable court directs and compel the Respondent to sign the Collective Bargaining Agreement for the period 2022-2024 as negotiated between the parties within,7 days from the date of judgment.
 - b. The Honourable court directs the Respondent to fill the schedule forms submitted to them to facilitate registration of the Collective Bargaining Agreement within 14days.
 - c. The Honourable court grant any other relief as it may deem fit.
 - d. Cost of the suit be borne by the Respondent.
2. The claimant in support of the suit filed list of documents of even date and annexed the following documents:-
 1. Recognition Agreement and negotiating procedure.



2. Claimant's letter dated 15th February 2021
3. Claimant's letters dated 21st June and 30th June, 2021
4. Claimant 's letter dated 27th July 2021 reporting a trade dispute
5. Respondent 's email dated 6th October 2021
6. Minutes of the meetings held on 26th January and 15th February 2022
7. Claimant 's letter dated 14th March 2022 and draft CBA
8. Respondent 's email dated 16th March 2022
9. Claimant's letter dated 17th March 2022
10. Respondent 's email dated 21st March 2022
11. Minutes of the conciliation meeting held on 26th May 2022
12. Claimant 's letter dated 30th May 2022
13. Respondent's email dated 7th June 2022
14. Claimant's letter dated 7th June 2022
15. Conciliator's report and recommendations dated 6th July 2022
16. Respondent's letter dated 27th July 2022
17. Sample contracts of employment and Respondent's letter on extra working hours.

(The documents were produced in the claim as annexures MI- 1 to MI -17)

The Claimant's case

3. The claimant stated that the parties herein have a valid Agreement relative to the Recognition Agreement and negotiating procedure which came into force on 11th November 2020. Annexure MI 1. On 15th February 2021, the Claimant initiated negotiation of Collective Bargaining Agreement for the period 2021-2023 and forwarded their proposals to the Respondent. Annexure MI 2. . On 21st June 2021 and 30th June 2021, the Claimant wrote to the Respondent proposing for a meetings to commence negotiations but the Respondent was adamant. Annexure MI 3. On 27th July, 2021, the Claimant reported a trade dispute to the Cabinet Secretary Ministry of Labour and on 18th August 2021, Jackeline Ndaru was appointed to act as a conciliator. Annexure MI 4. On 6th October 2021, the Respondent wrote to the Claimant requesting for suspension of the negotiation for a period of 4 months. Annexure MI 5. On 12th January, 26th January, 15th February 2022, parties met for the negotiations of Collective Bargaining Agreement and agreed on several clauses leaving a few in abeyance. Annexure MI 6. On 28th February 2022, parties concluded the negotiations and on 14th March 2022, the Claimant forwarded a draft CBA to the Respondent for their perusal and proposed a date for signing the same. Annexure MI 7.
4. That on 16th March 2022, the Respondent wrote to the Claimant highlighting several clauses that needed to be revised. Annexure MI 8. On 17th March 2022, the Claimant amended the identified clauses and forwarded a revised draft Collective Bargaining Agreement for their consideration and subsequent signing. Annexure MI 9.



5. That on 21st March 2022, the Respondent wrote to the Claimant postponing a meeting scheduled for signing of the Collective Bargaining Agreement. Annexure MI 10. The Respondent became obstinate and refused to sign the Collective Bargaining Agreement prompting the conciliator to invite parties for a joint conciliation meeting on 26th May 2022.
6. That on 26th May 2022, parties appeared before the conciliator and the Respondent demanded alteration of Clause 4 and 6 of the Collective Bargaining Agreement. The Claimant agreed to their proposals on the said clauses and the conciliator directed parties to sign the revised Collective Bargaining Agreement by 7th June 2022. Annexure MI 11. On 30th May 2022, the Claimant made amendments to the Collective Bargaining Agreement as agreed during the conciliation meeting and forwarded the revised CBA to the Respondent for signing. Annexure MI 12.
7. That on the 7th June 2022, the Respondent wrote to the Claimant proposing further changes to the Collective Bargaining Agreement on nightshift allowance. Annexure MI 13. On the same day the Claimant made the proposed modifications and forwarded another revised Collective Bargaining Agreement to the Respondent for signing. Annexure MI 14.
8. The Claimant stated that even after all those amendments/revisions the Respondent failed/refused to sign the Collective Bargaining Agreement.
9. On 6th July 2022, the conciliator issued the report and recommended that the Collective Bargaining Agreement be signed. Annexure MI 15. On 27th July 2022, the Respondent wrote to the Claimant seeking for more time before they can sign the Collective Bargaining Agreement. Annexure MI 16. On 26th August 2022, Respondent introduced periodic contracts of employment to the employees without involving the Claimant and the terms of those contracts are contrary to the negotiated Collective Bargaining Agreement. Annexure MI 17.
10. The Claimant contended that the Respondent's action of refusing to sign an already negotiated Collective Bargaining Agreement is mala fide and aimed at denying the Claimant's members' right to Collective Bargaining. That the Respondent's request for more time before they can sign the Collective Bargaining Agreement is unreasonable and unjustified bearing in mind that, negotiations commenced in 2021 and they had sufficient time to analyze each Clause of the CBA. The Respondent ought not to refuse or renege signing a Collective Bargaining Agreement which they fully took part in and actively participated.
11. The Claimant submitted that the right to Collective Bargaining is explicitly provided in *the Constitution* and an employer refusing to sign a Collective Bargaining Agreement is not only unfair but also unconstitutional.
12. The documents were produced in the witness statement of Rebecca Muthoki dated 8th October 2023.

Response

13. The Respondent entered appearance and filed a response to the memorandum of claim dated 18th March 2023 together with the witness statement of Simon Maina Hung'i of even date. The Respondent further filed list of documents of even date as follows:-
 1. A copy of the relative agreement(Recognition)
 2. Copies of the proposed & counter- agreement respectively
 3. A copy of the conciliator's report
 4. A copy of the labour officer's letter



5. Copies of some of the employment agreements for both casual and permanent employees
6. Copies of requests of employees
7. Sample copy of the respondent's letter
8. Sample of affidavits for employees requesting for additional pay and working hours
9. A copy of the last draft CBA

Response in summary

14. The witness statement of Simon Maina Hungi of 18th March 2023 was to the effect that he was a director of the respondent. He understood the dispute was about non-signing of the proposed Collective Bargaining Agreement by the respondent. He stated that the respondent had several employees, casual and permanent, unionised and non-unionised.
15. The witness admitted to existence of recognition agreement between the parties dated 11th November 2020. He stated that the signing of the recognition agreement was a sign of good their faith and willingness to negotiate and enter into a Collective Bargaining Agreement. That after the recognition agreement parties entered into negotiations of the Collective Bargaining Agreement. That the first draft Collective Bargaining Agreement was sent to their offices on the 15th of February 2021. The parties met and there were counter-proposals. The claimant shared a second draft Collective Bargaining Agreement claiming the changes had been effected yet nothing much changed. That afterward they exchanged emails and letters requesting for proper changes to be effected but all their proposals were not considered.
16. That a conciliator was appointed and notwithstanding their proposed amendments the conciliator went ahead and prepared a report forcing them to sign the Collective Bargaining Agreement vide letter dated 6th July 2022. The conciliator did not factor in any of their proposals or proposals of what some of their employees had informed them. The witness stated that in between the impasse, they had labour inspection on employment letters and payslips. They complied.
17. The Respondent requested the union to give them 2 months for the directors to deliberate on the issue but before expiry of the 2 months, the union filed this case. The witness stated that the Collective Bargaining Agreement should not contain unfavourable terms that the employer cannot meet. That the union employees gave them proposals on how to work and among them were proposals to have their shifts changed, working hour added and an additional pay be set for their own benefit. That the employees affidavits were some of the issued raised in the meeting but the claimant failed to incorporate them.
18. The witnesses stated that the respondent was asking for proper negotiations and for further amendments of the draft Collective Bargaining Agreement on basis that:-
 - a. There had been new developments as to the employment engagement of the respondent and its employees that had come after the draft Collective Bargaining Agreement that had not been incorporated.
 - b. The employees want a tailor cut terms to favour their specific working formula not incorporated under the Collective Bargaining Agreement.
 - c. The respondent should not be forced to signing a Collective Bargaining Agreement whose terms will not be capable of executing due to the nature of work involved.



19. The witness further stated that despite the pressure of the union to have the respondent sign the Collective Bargaining Agreement, the union did not meet the threshold of the employees required of them to sign the Collective Bargaining Agreement and that was why most of the interests of the employees are not captured in the draft Collective Bargaining Agreement as seen in their affidavits and request letters to the management.

Hearing and written submissions

20. The claimant's case was heard on the 24th October 2024. The claimant called Rebecca Muthoki as its witness who relied on her witness statement dated 8th October 2023 and produced the documents under list of documents for the claimant dated 31st August 2022(C-exh 1-17). She was cross-examined by counsel for the respondent Mwangi Advocate.
21. The Respondent's case was heard on even date with Simon Maina Hungi as RW. He adopted as defence evidence in chief his witness statement dated 18th March 2023. He produced as defence evidence documents stated under list of documents of even date. He was cross-examined by the Union Representative, Mr. Nyumba.
22. The parties filed written submissions.

DETERMINATION

23. The issue for determination was whether the claim was merited.

The relevant law

24. Section 57 of the *Labour Relations Act* provides legal framework for Collective Bargaining Agreement to wit:-“57. Collective agreements
 - (1) An employer, group of employers or an employers' organisation that has recognised a trade union in accordance with the provisions of this Part shall conclude a collective agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.”
25. The court held that it was not in dispute that the parties have a binding recognition agreement. After the recognition according to section 57 of the *Labour Relations Act* the next step was for the employer/ Respondent to conclude a Collective Bargaining Agreement with the union setting out the terms and conditions for the unionisable employees.
26. The court discerned from the response that the Respondent had received affidavits and letters by its employees some of whom were members of the union on the terms of employment which it wanted those requests incorporated in the Collective Bargaining Agreement before it signed. The court also noted the Respondent's witness, Simon, stated that the Respondent had not met threshold for the Collective Bargaining Agreement to be signed. On the later issue the court held that pursuant to the Recognition Agreement between the parties, the issue of threshold was spent. The claimant met the threshold for recognition and that is why the Respondent signed the recognition agreement pursuant to the provisions of section 54 of the *Labour Relations Act* which provides:-“54. Recognition of trade union by employer
 1. An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.” The Court read mischief on the part of the respondent and as it



attempted to justify the failure to conclude the Collective Bargaining Agreement. The Court found that the only outstanding issue was for the respondent to conclude the Collective Bargaining Agreement as per section 57 of *Labour Relations Act* (supra).

27. The union holding a recognition agreement had a right to collective bargaining under Article 41 of *the Constitution* which states:- “(5) Every trade union, employers’ organisation and employer has the right to engage in collective bargaining.” That right cannot be curtailed without valid reasons. Once the union/claimant met the threshold and was recognised, the employer/Respondent had no choice but to conclude the CBA.
28. The court appreciated that the signing of CBA is voluntary. Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) states:-

“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”
29. During the hearing CW Rebecca Muthoki the Branch Secretary, Athi River, produced all documents leading to the dispute. She told the court all the concerns raised by the management had been addressed in draft 3 of the CBA forwarded to the management and who failed to sign following which a trade dispute was handled by the conciliator who recommended the signing vide report dated 6th July 2022(C-exb 15).
30. RW was Simon Maina Hungi . He was the accountant and financial advisor of the respondent. He told the court that some of the issues they raised on the CBA was the classification of workers and overtime among other issues as per filed affidavits of employees and letters. He stated that the conciliator failed to listen to them. They needed time to negotiate on the issues raised by the workers. During cross-examination by the union representative Mr.Nyumba, RW confirmed they had an issue with clause 4 of the draft CBA on probation and admitted their proposal was captured in the last draft. That their issue with the clause on gratuity not being applicable in case of summary dismissal was factored. That clause 15 captured their proposal on 15 % wage increment. DW admitted that their concerns on clause 20 were addressed. That night shift which they had issue with was deleted under the final draft CBA. When asked what clauses had their concerns not met, RW answered “concerns of workers on shift work”. RW confirmed night shift was not part of the CBA as per their proposal. The final draft CBA was at pages 55-58 of the claimants documents.
31. In re-examination RW stated that their counter proposal on clause 9 was provision of free transport at night and in the morning. That these were proposals by the employees and the union refused further negotiations. That the terms of counter offer on clause 9 were far fair to the workers and not addressed by the draft CBA.
32. The court noted clause 9 of the draft CBA was on hours of work. On the allegations that the employees had proposals sent to employer is outside the framework of CBA negotiations under section 57 of the *Labour Relations Act*. The union represents unionisable employees. The employer is always free to offer any other benefit outside the CBA including the alleged night and day shifts free transport. The court having evaluated the evidence before the court and especially the evidence of RW and CW did not find a valid reason why the draft negotiated CBA should not be signed. RW testimony confirmed to the court that indeed all concerns of the employer at negotiations had been captured in the final draft CBA (C-exh 14)The Court upon perusal of the recommendation of the conciliator Jackline Ndaru of 6th July 2022 upheld the same for reasons that there was no justifiable reason why the employer



had not signed the negotiated CBA sent to it on through letter of 7th June 2022. The employer vide letter dated 27th July 2022 on the draft CBA did not raise any new issue but sought to understand the Employment Act and supplementary legislation (C-exh 16) which issues the court found had no relation with the conclusion of the CBA.

33. The Respondent requested for opportunity to negotiate and conclude the CBA and relied on decision of the court in Kenya Union of Domestic Workers, Hotels , Educational Institutions and Hospital Workers Union v Board of Management Kaimosi Teachers Training College (2024)e KLR where the Court held:- 'The Court appreciates that the parties ought to collectively bargain after recognition of the union according to Section 54 of the Labour Relations Act to wit:- '(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.' The Court holds that under the International Labour Organization Convention 87 (1948), Right to Organize and Collective Bargaining: Convention 98 (1949); Article 41 of the Constitution, and Section 54 of the Labour Relations Act, the Claimant has a right to expect collective bargaining with the Respondent. 75.The Court having found the claim premature based on the pending conciliation process and on considering the unresolved agreement on the financial aspects of the proposed CBA, the Court hereby refers the matter to the appointed Conciliator on the unresolved trade dispute to finalise the conciliation process on the collective bargaining within 30 days of this judgment. The Respondent to cause the negotiated CBA to be registered with the Court within 15 days of the parties' signing.' The court held the instant case distinguished as in that case, the conciliation process was pending and there were valid concerns on the financial aspects of the draft CBA. In the instant case, the court found no valid reasons for the failure to conclude the CBA.
34. The Court held that the claimant union had met the conditions for the conclusion of CBA following the recognition agreement. The court found no valid reason was given for the non-conclusion of the CBA. The Court noted in clause 30 the CBA was for 24 months but that was not an issue in the dispute. The court found the alleged proposals by its employees can always be factored in their contracts with the employer. The other reason advanced for the failure to sign the negotiated agreement (CBA) was that the Respondent had since received affidavits and letters by its employees /members of the union on some issues they wished to be in the CBA. The court read section 57 Labour Relations Act (supra) to be to effect that the agreement was between the union and the employer and not individual employees. The Court further read mischief by the Respondent and saw an attempt to manipulate the members of the union who ought to engage with the union on the CBA and not the employer.
35. Consequently, the claim dated 31st August 2022 is held as merited. The Court orders the respondent to conclude and sign the CBA forwarded to it vide letter dated 7th June 2022 by the claimant within 30 days of this Judgment and complete the necessary forms for registration of the CBA within that period. Taking into account the nature of proceedings and in the spirit of fostering harmony between the two parties, the Court makes no order as to costs.

36. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF FEBRUARY, 2025.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno



claimant: Muunda for Nyumba Union Rep

Respondent: Mwangi h/b Abuya

