



Kenya Union of Commercial, Food and Allied Workers v K-Unity Savings & Credit Co-operative Society Limited (Cause E269 of 2024) [2025] KEELRC 955 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 955 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E269 OF 2024
BOM MANANI, J
MARCH 27, 2025**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
**K-UNITY SAVINGS & CREDIT CO-OPERATIVE SOCIETY
LIMITED RESPONDENT**

RULING

Background

1. The Claimant is a Trade Union registered under the laws of Kenya and entitled to represent workers in the commercial, food and related sectors in the Republic. It contends that its membership includes unionisable employees of the Respondent.
2. The Claimant has instituted the instant suit against the Respondent alleging that the Respondent has, without reason, refused to sign the draft Collective Bargaining Agreement (CBA) between the parties for the period between January 2021 and December 2023. As such, it inter alia, prays for an order to compel the Respondent to sign the said draft CBA.
3. The thrust of the Claimant’s case as per the Statement of Claim on the court file is that it has a subsisting Recognition Agreement with the Respondent which entitles the two to enter into the process of collective bargaining. The Claimant avers that based on the foregoing, the parties have previously successfully negotiated at least two CBAs which covered the period between January 2018 and December 2021.
4. The Claimant contends that upon the expiry of the CBA for 2020-2021, the parties embarked on the process of negotiating the 2022-2023 CBA. It further contends that the parties successfully negotiated



- and agreed on all the terms of the draft CBA and all that remained was for the instrument to be executed and registered.
5. The Claimant avers that after the aforesaid successful negotiations, the Respondent refused to sign the draft CBA for undisclosed reasons. According to the Claimant, the Respondent's failure to sign the draft CBA resulted in the instrument not being presented for registration.
 6. The Claimant contends that following the Respondent's refusal to sign the draft CBA, it (the Claimant) declared a trade dispute between the parties. Consequently, it (the Claimant) reported the matter to the relevant Ministry. The Claimant avers that it is at this stage that it emerged that the Respondent had an issue with clause 36 in the draft CBA on salary review for unionisable members.
 7. The Claimant avers that the Ministry appointed a conciliator to assist the parties to resolve the impasse. It contends that during the conciliation meetings, the Respondent asserted that it was agreeable to a two phased salary review for unionisable employees to wit the following:-
 - a. 11% increase in the 1st year of the CBA.
 - b. 7% to 8% increase in the 2nd year of the CBA.
 8. The Claimant further contends that the Respondent expressed the view that the aforesaid salary review was not to be automatic. Rather, it was to be pegged on the performance of individual employees measured through a Balanced Score Card Performance Management Tool.
 9. The Claimant contends that the Respondent's change of mind on the matter surprised it (the Claimant) since the parties had reached consensus on it (the matter). According to the Claimant, the two had agreed on upward salary review for unionisable employees staggered as follows:-
 - a. 11% during the 1st year of the CBA.
 - b. 11% during the 2nd year of the CBA.
 10. In the Claimant's view, the Respondent was attempting to renege on agreed terms of the draft CBA which had already been communicated to the beneficiaries of the instrument. According to it (the Claimant), this was not tenable as it was going to be difficult to account to the beneficiaries regarding the sudden and arbitrary changes.
 11. Based on the foregoing, the Claimant prays for, inter alia, the following orders:-
 - a. An order to compel the Respondent to sign the draft CBA with clause 36 thereof remaining unaffected with the consequence that the beneficiaries of the CBA are to get two salary increments of 11% each in the 1st and 2nd years of the CBA.
 - b. An order that the Respondent prepares the schedule forms for the draft CBA and presents it for registration.
 - c. An order requiring the Respondent to fully implement the draft CBA and to settle resultant arrears of salaries and allowances within 30 days of the court's judgment.
 12. Accompanying the Statement of Claim is the application under consideration dated 11th April 2024. In the application, the Claimant prays for, inter alia, the following orders:-
 - a. That the court orders the Central Planning and Project Monitoring Department to analyze the issue in dispute and file an economic report within thirty (30) days of the date of the orders.



- b. That the court orders the Respondent to cooperate with the Central Planning and Project Monitoring Department by providing all the necessary information to the agency to enable expeditious analysis of the dispute and timeous filing of the economic report.
13. The Respondent has opposed the application. According to it (the Respondent), there is discordance between the orders sought in the main suit and the application. As such, the orders sought in the application have no bearing on the issues in contest in the suit and will serve no useful purpose.

Analysis

14. I have carefully analyzed the Statement of Claim as presented. From it (the Statement of Claim), it is apparent that the Claimant's position is that the parties have already agreed on the terms of the impugned draft CBA. The only challenge is that the Respondent has failed to sign and present the instrument for registration for no apparent reason. As such, it is its (the Claimant's) prayer that the court orders the Respondent to sign and cause the draft CBA to be registered in its current state.
15. Put differently, the Claimant is not contending that the parties are yet to agree on any clause in the draft CBA. On the contrary, it is its view that the parties have already agreed on all clauses including clause 36 on the staggered salary raise for unionisable employees at the rate of 11% per annum for the two years that the draft CBA is to be in force.
16. From the foregoing, it is clear that the dispute before court, in so far as the Claimant is concerned, is not whether the matrix applied to arrive at the proposed salary review in clause 36 of the draft CBA is valid. Rather, it is whether the Respondent should be compelled to sign and cause to be registered the draft CBA in its current form. The foregoing being the case, the Respondent questions the purpose the economic report sought in the application will serve.
17. If I understand the application correctly, the analysis which the Claimant requires the Central Planning and Project Monitoring Department to undertake is meant to determine whether the Respondent's business can support the wage increment proposed in clause 36 of the draft CBA. The need for such a report will only arise if the case by the parties is that they have been unable to agree on the increment and they require the assistance of the agency to resolve the standoff. But this is not the Claimant's case, at least from the Statement of Claim in court. Its case is that the draft CBA has already been agreed and the Respondent should be compelled to sign and present it for registration.
18. If the foregoing is the Claimant's case, what then will be the value of the economic report by the Central Planning and Project Monitoring Department? What is the court to do with the report? The court cannot use the report to alter clause 36 of the draft CBA because this is not the case before it (the court). As such, the report will be superfluous.
19. The position would have been different if the Claimant's case was that there is a stalemate between the parties in finalizing the draft CBA because they are unable to agree on the salary increment to be included in the instrument due to purported economic constraints on the part of the employer. In such case, the court will easily call for the economic report by Central Planning and Project Monitoring Department to resolve the stalemate.
20. In any event, a reading of the replying affidavit by the Respondent suggests that even if the court was to ultimately consider the viability of implementing clause 36 of the draft CBA, this will not be with a view to determining whether the Respondent's business can absorb the proposed increment. This is because the Respondent's grievance appears not to be whether it has capacity to absorb the proposed increment because of economic factors. Rather, its grievance is that to sanction the increment will: cause the salaries of some members of staff to overshoot their agreed maximum salaries; be



discriminatory against employees in management whose salaries are reviewed based on performance; and offend the Respondent's policy that salary increments are supposed to be performance based.

21. An economic survey report will not assist the court in determining such matters. It (the report) will be of no value in determining whether: the effect of the proposed CBA will be to overshoot agreed maximum salaries for some staff members; implementing the proposed CBA will discriminate against employees who are in management; and to implement the proposed CBA will offend the Respondent's policy that upward salary reviews for employees ought to be pegged on their performance.

Determination

22. Having regard to the nature of the controversy before the court, I find that it will be superfluous to require the Central Planning and Project Monitoring Department to prepare an economic report on the matter. The dispute is whether the parties have an agreed and registrable draft CBA which the Respondent should be compelled to sign and register. A report on the Respondent's economic activities will not resolve this question. It will not assist the court to discern whether the parties had agreed on the impugned draft CBA and whether the Respondent should be compelled to sign and present it for registration.

23. As such, the application is declined.

24. Costs of the application shall abide the outcome of the main dispute.

DATED, SIGNED AND DELIVERED ON THE 27TH DAY OF MARCH, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

