



**Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA Workers) v Gurunanak (Ramgarhia) Sikh Hospital (Cause 788 of 2022) [2025] KEELRC 946 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 946 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 788 OF 2022**  
**BOM MANANI, J**  
**MARCH 27, 2025**

**BETWEEN**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND HOSPITAL WORKERS (KUDHEIHA WORKERS) ..... CLAIMANT**

**AND**

**GURUNANAK (RAMGARHIA) SIKH HOSPITAL ..... RESPONDENT**

**RULING**

1. The Claimant has instituted this action seeking to compel the Respondent to conclude the stalled collective bargaining process by the parties in order to pave way for registration of a new Collective Bargaining Agreement (CBA) between them. It avers that although the parties have a subsisting Recognition Agreement and have previously entered into several CBAs, the Respondent has declined to conclude negotiations with respect to the proposed CBA. Hence, the need for the court to intervene and bring the process to a close.
2. On its part, the Respondent has filed a defense asserting that the Claimant lacks the requisite simple majority of unionizable employees to entitle it to conclude negotiations on a new CBA with it (the Respondent). The Respondent has thus filed a preliminary objection challenging the jurisdiction of the court to entertain the suit on the following grounds:-
  - a. That the court lacks jurisdiction to determine the suit because it (the Respondent) has applied to the National Labour Board to terminate the Recognition Agreement between the parties and the matter is pending resolution.
  - b. That there is the danger of the court and the National Labour Board arriving at conflicting decisions on whether the Recognition Agreement between the parties should be terminated.



- c. That owing to the foregoing, the instant suit amounts to forum shopping and ought to be struck out.
3. Needless to say that the Claimant has opposed the position expressed by the Respondent on the competence of the suit. The parties have filed submissions to support their contrasting positions.

### Analysis

4. The contention by the Respondent that the court lacks jurisdiction to entertain the dispute between them appears to be misguided. A cursory perusal of the Statement of Claim demonstrates that the controversy before court relates to whether the Respondent should be compelled to conclude the stalled collective bargaining process. The Claimant has not moved the court to determine the validity of the Recognition Agreement between the parties.
5. The court's jurisdiction is predicated on section 12 of the Employment and *Labour Relations Act* as read with article 162 of *the Constitution* of Kenya 2010. One of the matters in respect of which the court has jurisdiction concerns disputes between employers and trade unions. This includes disputes arising from and relating to the process of collective bargaining.
6. The court is alive to the fact that whether a Recognition Agreement between an employer and a trade union ought to be terminated is a matter to be determined by the National Labour Board (see section 54(5) of the *Labour Relations Act*). However and according to the Statement of Claim, this is not what the court is invited to determine in this cause. What the court is asked to resolve is whether the Respondent is obligated to finalize the pending collective bargaining process between the parties.
7. It is true that the Respondent has a pending request before the National Labour Board to terminate the Recognition Agreement between the parties. However, this does not ipso facto render the subsisting Recognition Agreement ineffective. The agreement remains valid until it is terminated by the National Labour Board or through consensus of the parties or by the court (*Bakery, Confectionery, Food Manufacturing and Allied Workers Union v Tropical Heat Limited (Cause E916 of 2022)* [2024] KEELRC 1983 (KLR) (30 July 2024) (Judgment)).
8. The foregoing being the case, what is the position of parties to a Recognition Agreement in the interceding period? Until the agreement is cancelled as suggested above, the parties to it remain bound by it. As such, they remain obligated to carry out what is required of them under the agreement and the law.
9. By virtue of sections 54 and 57 of the *Labour Relations Act*, parties who have a subsisting Recognition Agreement are obligated to undertake and conclude the process of collective bargaining. As such, the Respondent has a duty to undertake this exercise with the Claimant.
10. If the Respondent declines to finalize the process, this results in a trade dispute between the parties which this court is mandated, by virtue of section 12 of the *Employment and Labour Relations Court Act*, to determine. As such, the contention by the Respondent that the court has no jurisdiction to determine the instant dispute is erroneous.
11. In the court's view, if the Respondent wanted to stall this matter in order to pursue resolution of the dispute before the National Labour Board, it ought to have applied for stay of proceedings: not for striking out of the case on account of absence of jurisdiction by the court to entertain it.
12. The Respondent contends that if the Claimant was aggrieved by its (the Respondent's) request to the National Labour Board to de-recognize it (the Claimant), it (the Claimant) ought to have moved the Cabinet Secretary, Ministry of Labour and Social Services for conciliation in terms of section 54(6)



of the *Labour Relations Act*. Instead, it (the Claimant) reported an entirely different matter to the Ministry to wit failure by the parties to agree on the terms of the proposed CBA.

13. As was observed by the learned Judge in *Bakery, Confectionery, Food Manufacturing and Allied Workers Union v Tropical Heat Limited* (supra), the process of de-recognition of a Trade Union starts with the lodging of a request by the employer to terminate the Recognition Agreement between the parties with the National Labour Board. If the parties are dissatisfied with the pronouncement of the National Labour Board on the matter, they have the liberty to invoke the conciliation process under section 54(6) of the *Labour Relations Act*. If they are still dissatisfied with the outcome of conciliation, they may escalate the matter to the court.
14. The suggestion by the Respondent that the Claimant ought to have moved the Ministry for conciliation whilst the matter was pending before the National Labour Board is not tidy for practical reasons. The proposal is blind to the reality that such approach will result in the two agencies being simultaneously seized of the same matter with the potential of reaching conflicting decisions on it. It is for this reason that it is desirable that the parties first approach the National Labour Board before escalating the matter to the Cabinet Secretary for labour and eventually the court if there is need.
15. Having regard to the foregoing, I do not think that the Claimant erred in not invoking the conciliation process in respect of the request by the Respondent to de-recognize it since the matter was still live before the National Labour Board and remains so to date. However, the presence of a de-recognition dispute before the aforesaid Board is not, in my view, a bar to the Claimant seeking conciliation in respect of other disputes between the parties including the Respondent's alleged refusal to conclude the collective bargaining process between them.
16. The Respondent contends that if this court entertains the suit before the National Labour Board pronounces itself on the validity of the Recognition Agreement between the parties, it will in effect be usurping the powers of the said Board since it (the court) will be forced to determine whether the parties have a valid Recognition Agreement. I do not agree.
17. The court notes (and the Respondent does not dispute this fact) that the parties had previously successfully negotiated CBAs between them. As noted earlier, a trade union can only negotiate a CBA with an employer if the two have a valid Recognition Agreement. As such, the fact that the parties had previously negotiated CBAs between them can only be understood to mean that they had a valid Recognition Agreement.
18. The court thus presumes in favour of the validity of the subsisting Recognition Agreement between the parties until it is set aside as provided in law. It is on this basis that the court holds that unless and until the National Labour Board has set aside the impugned Recognition Agreement, it (the court) is entitled to entertain the instant dispute relating to enforcement of the collective bargaining process between the parties.
19. Finally, whether an employer and a trade union have a valid Recognition Agreement is a matter of both fact and law. It is not a pure point of law question because to determine it, the court must determine the number of unionizable employees that an employer has vis a vis the number thereof that has been recruited by the trade union. This requires evidence to be tendered by the parties.
20. As such, if the Respondent proposes to pursue the matter as a defense to the cause, it (the Respondent) must do so during trial of the cause and present evidence to justify its contention that there is no valid Recognition Agreement between the parties as indeed was the position in the case of *Bakery, Confectionery, Food Manufacturing and Allied Workers Union v Tropical Heat Limited* (supra). It cannot take up the matter by way of a preliminary objection.



**Determination**

- 21. The upshot is that the court finds that the preliminary objection is devoid of merit.
- 22. As such, it is dismissed.
- 23. Costs of the objection will abide the outcome of the case.

**DATED, SIGNED AND DELIVERED ON THE 27<sup>TH</sup> DAY OF MARCH, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> 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.

**B. O. M MANANI**

