



**Banking Insurance & Finance Union (Kenya) v Kenya Commercial Bank Limited or KCB Bank Kenya Limited (Cause 540 of 2016) [2025] KEELRC 790 (KLR) (14 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 790 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 540 OF 2016  
B ONGAYA, J  
MARCH 14, 2025**

**BETWEEN**  
**BANKING INSURANCE & FINANCE UNION (KENYA) ..... CLAIMANT**  
**AND**  
**KENYA COMMERCIAL BANK LIMITED OR KCB BANK KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimants filed the memorandum of claim dated 09.02.2016 through the Secretary General Mr. Isaiah Kubai, MBS and the union representative Mr. Isaiah Munoru appeared for the union. The union prayed for judgment against the respondent for orders as follows:
  - a. An order stopping the respondents from issuing of the new letters of appointment until the claimants are fully involved in the deliberations as provided in the Joint Negotiating Machinery.
  - b. The Court to find and order that the respondents to revoke the letters which have already been issued to unionisable employees and redraft fresh letters which are agreeable by both parties after negotiations.
  - c. The respondents be ordered no to change the original terms and conditions of the unionisable employees arbitrarily and without a justifiable cause.
  - d. The court to find and order that the mere change of name from Kenya Commercial Bank Ltd to KCB Bank (K) Ltd should not be enough reason to change all terms and conditions of the employees.
  - e. Costs be provided for.
2. The claimant's case was as follows:



- a. The respondent had unilaterally changed the letters of employment for unionisable staff in place since 1962 when parties entered a recognition agreement.
  - b. The respondent had violated the undertaking conveyed to the claimant in the letter dated 14.01.2016 that the employees would be transferred to the KCB Bank Kenya Ltd with their accrued benefits, existing terms and conditions of employment, formalized through outgoing employer Kenya Commercial Bank Ltd.
  - c. Unilaterally introducing new clauses in the new letters of contracts which are already provided for in the CBA between the parties governing the terms and conditions of employment.
  - d. Introducing new clauses in the new letters which locks the union from defending their members in cases of disciplinary issues introduced by the new letters of appointment
  - e. Ignoring the union letter of 20.01.2016 asking for consultations.
  - f. Introducing a new attendance register which is different in context from the existing one which subsequently altered and denied employees their rights to overtime payments as articulated both by the CBA and the law.
3. The respondent filed the statement of response dated 17.06.2026 through Ochieng', Onyango, Kibet & Ohaga Advocates. The respondent prayed that the claim be dismissed with costs to the respondent. The respondent's pleadings were as follows:
- a. The parties are in the recognition agreement dated 03.10.2000 and CBA dated 10.09.2015 as pleaded for the claimant. The negotiated terms and conditions of service apply to unionisable employees.
  - b. The bank restructured and all employees (except few remaining in support of the KCB Group Function) transferred to KCB Bank Kenya Limited on existing terms, conditions of employment and pension benefits. The employees and union were consulted. In particular the respondent consulted the claimant union and the allegation the new letters unilaterally amended the letters of contract has no basis. Several meetings were convened with the Central Staff Committee (CSC) members who represented the union within the respondent or shop floor level.
  - c. The respondent did not unilaterally introduce new clauses in the new letters of employment and the new letters conferred benefits far above the minimum benefits in the [Employment Act, 2007](#) such as bereavement or companionate leave for 5 days with full pay, compensatory leave and lodger leave.
  - d. The new letters have no terms and conditions preventing the union from representing its members in disciplinary issues.
  - e. The Court (Abuodha J) directed conciliation of the issues in Miscellaneous Application No.13 of 2016 between the claimant union and the respondent and at conciliation the union failed to identify contentious clauses. But filed submissions before the conciliator (the record shows the conciliator subsequently returned that the dispute remained unresolved.)
  - f. The respondent does not have intention to deny overtime and the new system provides for calculation of overtime.



- g. On 03.02.2016 the claimant circulated communication to staff to decline to sign the new contracts because the union was allegedly still in discussions. Confusion, chaos and conflict arose in those circumstances.
  - h. Section 10(5) of *Employment Act* requires the respondent to consult employees in event of change of particulars of an employment contract and the CSC was duly consulted.
  - i. It was not unlawful or unfair to stipulate in the new letters of employment terms and conditions already provided for in the CBA. The employees were transferred with all their exiting benefits and terms of employment. The new letters did not interfere with any existing terms and conditions of employment per *Employment Act* and CBA
4. The parties' respective witnesses testified. Final submissions were filed. The Court has considered the material on record. The Court returns as follows:
- a. The evidence is that the respondent consulted the CSC in absence of the union officials. For purposes negotiating terms and conditions of service, the recognition agreement provided for a Joint Negotiation Council for purposes of negotiation. If the new letters amounted to a grievance, which appears to have been the case, the recognition agreement provided that CSC of concerned Bank (the respondent in the instant case) was to meet in 7 days and further, "It shall be in order for not more than two officials of the Association and of the Union to attend any meeting involving a grievance to assist the employer and employee representatives respectively." Further, in event an agreement on the grievance was not arrived at, the matter would be referred to the Joint Negotiating Council and promptly so. The respondent appears to have not allowed the union officials to attend the meetings said to have been held with the CSC. The respondent is found to have moved to issue the new letters in breach of that agreement on grievance resolution in circumstances that parties mutually agree that section 10 (5) of the Act already cited required consultations in event of any change in particulars of employment (which appear to include change of the name of employer) and especially where new letters were desired to be issued to individual staff. It appears to the Court that the decision to issue new letters, their contents aside, was by itself a negotiation issue or grievance to be handled per provisions of the recognition agreement but that was not done.
  - b. The respondent's witness has stated at paragraph 25 of the witness statement thus, "25. It is my understanding that it is neither unlawful nor improper to stipulate in the letter of employment terms and conditions already provided for in the Collective Bargaining Agreement." Further, that no prejudicial clause was in the new letters precluding the union from representing its members in the disciplinary process. In that consideration and further noting that the respondent has pleaded and offered that evidence that the new letters codified the CBA terms and conditions, the Court returns that a declaration will issue that the impugned new letters of the contract of employment be construed as consistent with the terms and conditions of service in the CBA in issue unless the variance is more advantageous to the union members and in event of an adverse variance, the terms and conditions in the CBA then in issue to prevail. In that regard, the Court will not delve into specific clauses as urged for parties allegedly at variance and in which case, any dispute in that respect will fall for determination in accordance with the parties' grievance and negotiating procedures per the recognition and collective agreements. While making that finding the Court has considered the time lapse of about ten years and the declaration is considered to serve the parties' mutual interests without unnecessary unsettling the work place or subsequently negotiated CBAs and which invariably are bidding upon the parties.



- c. The parties continue in collective and recognition agreements and to foster good industrial relationship each will bear own costs of the suit.
5. In conclusion the suit is hereby determined and judgment entered for parties with orders as follows:
  - a. The declaration hereby issued that the impugned new letters of the contract of employment for the unionisable employees herein be construed as consistent with the terms and conditions of service in the CBA in issue at the material time, unless, where the variance is more advantageous to the union members, and further, in event of an adverse or inconsistent variance, the terms and conditions in the CBA at the material time of the dispute herein to prevail.
  - b. Each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 14<sup>TH</sup> MARCH, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

