



**Kenya Union of Commercial, Food and Allied Workers v Khetia Garments Limited  
(Cause E010 of 2021) [2025] KEELRC 720 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 720 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E010 OF 2021  
MA ONYANGO, J  
MARCH 6, 2025**

**BETWEEN**

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

**AND**

**KHETIA GARMENTS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the [Labour Relations Act](#) to represent the employees in the commercial sectors as more specifically set out in the membership clause of its Constitution.
2. The Respondent is a company registered under the laws of Kenya and engages in business in Kenya.
3. The Claimant and the Respondent have a valid and subsisting recognition agreement signed on 1<sup>st</sup> November, 2019.

**Claimant's Case**

4. It is the Claimant's case that on 4<sup>th</sup> March 2019 it forwarded its proposals for review of the 2020/2022 Collective Bargaining Agreement (CBA) to the Respondent and requested the Respondent to send its counter proposals to enable the parties commence negotiations for the CBA.
5. The Claimant states that all the meetings held to negotiate the CBA did not make progress as the Respondent refused to provide the Claimant with counter proposals and remained uncooperative with a predetermined decision to halt the negotiations.
6. The Claimant was compelled to report a trade dispute to the Cabinet Secretary, Ministry of Labour and Social Protection on 26<sup>th</sup> June 2020 on the failed negotiation.



7. The Claimant avers that by its letter dated 15<sup>th</sup> August, 2020 the Respondent informed the Cabinet Secretary that it was not aware about any dispute between it and the Claimant as no issue had arisen over the CBA negotiations.
8. The Cabinet Secretary non-the-less accepted the dispute by letter dated 2<sup>nd</sup> September, 2020 and the Chief Industrial Relations Officer appointed Mr. Timothy Kipruto of Eldoret Labour Office as conciliator.
9. The Conciliator convened a meeting on 24<sup>th</sup> September, 2020 where the Respondent stated that it could not negotiate on any proposals by the Claimant due to Covid 19 Pandemic.
10. After convening several meetings at which no progress was made, the conciliator on 14<sup>th</sup> January, 2021 issued a certificate of unresolved dispute. The Claimant avers that as soon as the certificate was issued the Respondent embarked on intimidation and coercion of its employees who were union members to withdraw from union membership. This prompted the Claimant to address several letters on the same to the Respondent.
11. In the Memorandum of Claim dated 19<sup>th</sup> February, 2021 the Claimant prays that the court orders the Respondent to sign the 2020-2022 CBA as proposed by the Claimant.
12. Together with the Memorandum of Claim the Claimant filed a notice of motion in which it sought the following prayers:
  - a. That this suit be certified as urgent and be heard on priority basis.
  - b. That service of this suit upon the Responded be dispensed with and that the Applicant be heard ex parte in the first instance.
  - c. That pending the hearing and determination of this claim the Hon. Court be pleased to issue orders restraining the Respondent from victimizing, intimidating, coercing, terminating, dismissing, or disciplining the Claimants members because of their membership to the Union.
  - d. That Central Planning Monetary Unit be ordered to analyses and provide an economic report upon receipt of the reply.
  - e. That the Honourable Court do issue any other order it deems fit to address the cause of justice.
  - f. That cost of this Application be in the cause.
13. Upon considering the application which was filed under certificate of urgency, the court issued orders restraining the Respondent from victimizing or terminating the services of the Claimant's members on account of membership of the union.

### **Respondent's Case**

14. The Respondent filed a Response to the Claimant's Claim dated 15<sup>th</sup> March, 2021 in which it admits receiving the Claimant's proposals for CBA dated 4<sup>th</sup> March 2019.
15. The Respondent states that its letter dated 4<sup>th</sup> November, 2020 was clear on its position that the issue of salary increment be put on hold until business normalizes since it had been greatly affected by Covid-19 Pandemic and it did not want to lay off its employees on account of the difficult times it was going through. That at the time it received the Claimant's proposals for the CBA it had closed all operations on account of Covid-19 save for receipt of mail.



16. The Respondent avers that even during negotiations it requested that the same be put on hold due to the challenges brought by Covid 19. That a Memorandum of Understanding between Tripartite Social Partners: the Ministry of Labour and Social Protection, the Central Organization of Trade Unions (COTU) and Federation of Kenya Employers (FKE) put on hold issues of CBA on account of challenges employers were experiencing due to Covid 19 Pandemic.
17. According to the Respondent there was no dispute between it and the Claimant. It denied intimidating its employees who were members of the union on account of union membership and averred that employees withdrew from union membership on their own free will.
18. The Respondent further averred that at the time of filing the suit herein the Claimant no longer commanded a simple majority of the unionisable employees of the Respondent as required under section 54 of the [Labour Relations Act](#) to warrant it to negotiate the CBA with the Claimant. That this was brought about by some of the Claimant's members reaching retirement age, others abandoning work, leaving work because of vulnerability and Covid 19 pandemic or termination on account of gross misconduct among other legitimate reasons.
19. By an application dated 15<sup>th</sup> March 2021, filed under certificate of urgency, the Respondent sought the following orders:
  - a. That the instant application be Certified as Urgent and be heard expert int the 1<sup>st</sup> instance.
  - b. That the orders issued by this Court on 26<sup>th</sup> February, 2021 be stayed and/or suspended and/or discharged.
  - c. That the Court be pleased to order that the Respondent has not met the threshold as provided under Section 54(1) of the [Labour Relations Act](#) recruitment of at least 51 of members, and that the Recognition Agreement executed on the 1<sup>st</sup> November, 2019 and the Collective Bargaining Agreement forwarded for consideration can not stand and/or are of no effect.
  - d. That the costs be borne by the Respondent.
20. Upon considering the application the court made the following orders:

The court on 26<sup>th</sup> February, 2021 issued orders among others restraining the respondent from victimizing or terminating the services of the claimant's members on account of their union membership. The application by the Union in respect of which the order was issued was to be served on the respondent who was to make a response thereto and the matter be mentioned today 15<sup>th</sup> March, 2021 for further directions on hearing and disposal. The Court is instead confronted by the present application brought under certificate of urgency seeking among others the discharge of the orders made on 26<sup>th</sup>, February, 2021. To issue any order on the present application will just add more confusion and delay the matter. The Court in its order issued on 26<sup>th</sup> February, 2021 did not bar the respondent from taking action against employees on ordinary workplace infractions. What the Court restrained was dismissal or disciplinary sanctions on employees on account of their membership to the union which is the subject matter of the dispute before court.

That having been said, let the application dated 15<sup>th</sup> march, 2021 be served on the claimant and be mentioned on 22<sup>nd</sup> march, 2021.
21. The parties thereafter informed the court that they were attempting out of court settlement of the case. On 21<sup>st</sup> March, 2023 counsel for the Respondent informed the court that the parties had compromised the dispute while the Claimant's representative informed the court that no settlement had been reached.



22. The court interpreted this to mean that the parties had been unable to agree and referred the matter to the Central Planning & Project Monitoring Department of the Ministry of Labour and Social Protection (CPMU) to prepare an economic report to assist the court in determining the dispute as is customary for economic disputes.
23. The CPMU report dated 31<sup>st</sup> August 2023 was filed in court on 4<sup>th</sup> September, 2023. The court thereafter directed the parties to file their submissions incorporating their comments on the report. Both parties filed submissions.

### **CPMU Report**

24. The CPMU Report is dated 31<sup>st</sup> August, 2023. The Report noted that the Respondent refused to disclose its financial position citing data confidentiality, but stated that the firm had been profitable during the period under review.
25. Under the compensable factors, the CPMU Report states that the percentage rise in the cost of living over the relevant period under the Wages Guidelines was 9.36%. The Report further noted that productivity under Wages Guideline No. 2 which requires that productivity forms the major factor for any additional wage compensation was achieved by the Respondent by assigning targets to employee and rewarding whoever achieved the targets set in both monetary and non-monetary rewards.
26. The CPMU Report states that the compensable Consumer Price Indices (CPI) entitlement for the unionisable employees was 4.68% per annum for both the 1<sup>st</sup> and 2<sup>nd</sup> years or 9.36% for 2 years.

### **Claimant's Submissions**

27. The Claimant submitted that the parties had agreed on some clauses such as overtime, maternity/ Paternity leave, hours of work, compassionate leave, annual leave, retirement, bonus and safari allowance.
28. The Claimant submitted that although the CPMU Report states that the number of union members had been declining, this is not the case. That none of the employees was interrogated on the issue and the information used was obtained only from the Respondent.
29. The Claimant further submitted that from the CPMU Report, the Respondent's financial position had remained profitable in spite of the COVID-19 Pandemic. Further, that the CPI entitlement of 9.36% had been eroded by inflation.
30. The Claimant proposed Kshs. 6000 or 30% of basic wage for house allowance and the other clauses to be awarded as per its proposals.

### **Respondent's Submissions**

31. The Respondent did not make any proposals on the CBA concentrating instead on the issue of membership of the union which it insisted was below 51%. According to the Respondent the Claimant has no capacity to negotiate. In support of its position the Respondent cited and relied on Kenya Union of Commercial, Food and Allied Workers v House Mart Limited [2021] and Bakery, Confectionary, Food Manufacturing and Allied Workers' Union (Kenya) v Proctor and Allan (E.A) Limited [2015]



## Analysis and Determination

32. I have considered the CPMU Report and the submissions of the parties. The issue in dispute herein and which is for determination by this court is the terms and conditions of service of unionisable employees of the Respondent, that is, the CBA.
33. Section 54 of the *Labour Relations Act* provides that an employer who has signed a recognition agreement with a trade union shall enter into a collective bargaining agreement with the union.
34. The section 54 reads:
- 54.
- (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.
  - (2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.
  - (3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a The *Labour Relations Act*, 2007 49 trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.
  - (4) The Minister may, after consultation with the Board, publish a model recognition agreement.
  - (5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.
  - (6) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.
  - (7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.
  - (8) When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister.
35. Subsections 5 to 8 relate to disputes over recognition of a trade union. Subsection 5 provides that an employer who wishes to terminate or revoke a recognition agreement should apply to the National Labour Board.
36. The dispute before this court is not on termination of the recognition agreement but on the terms and conditions of service to be incorporated into the parties collective bargaining agreement.
37. As of now, there is an existing and therefore valid recognition agreement between the parties herein. Until that recognition agreement is terminated or revoked, the Respondent is under obligation to



negotiate a CBA with the Claimant. The arguments of the Respondents that the Claimant does not have a simple majority among its unionisable employees is therefore not an issue before this court for determination.

38. The court notes that the Respondent has not made any proposals on the CBA before this court. The court however notes that some clauses of the CBA were agreed upon during the negotiations. The court further notes that the only objections that the Respondent raised during negotiations were that it could not raise salaries at that time due to COVID-19 Pandemic which is now long behind us. There is therefore no valid reason why the Respondent should not enter into a CBA with the Claimant.
39. The role of the ELRC to adjudicate on CBA issues was discussed at length by the Court of Appeal in *Kenya Tea Growers Association v Kenya Plantation and Agricultural Workers Union* cited by the Respondent, where the Court held that this court is empowered by the Constitution and both the Employment and Labour Relations Court Act and the Labour Relations Act to adjudicate disputes arising from negotiations of CBA. The Court of Appeal went ahead and made determinations on the CBA that was the subject of Appeal. At paragraph 3 thereof the court posed the question:
3. So what happens when an employer or employer’s organization and the union are unable to agree on the terms of such a CBA? What role, if any, does the Employment and Labour Relations Court (ELRC) play in such circumstances? The appeal before us revolves around these fundamental questions.
40. The question was answered in several paragraphs. Of relevance are paragraphs 38 to 50 of the judgment which I quote extensively below:
38. We reiterate that the appeal herein turns principally on this issue: what role, if any, does the ELRC play where parties are unable to agree on the terms of a CBA? In determining that issue an examination of the ELRC’s jurisdiction is imperative.
39. The starting point would be Article 162 (2)(a) of the Constitution which stipulates that-
- 1 ...
2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –
- (a) employment and labour relations;...”
40. That provision delineates the broad principles and aspirations of the people of Kenya for the formation of a court specifically to determine disputes relating to employment and labour relations. The details and actualization of those aspirations and principles were left to several Acts of Parliament and Regulations relating to such disputes which have since been enacted.
41. The ELRC Act establishes the ELRC and sets out its jurisdiction. The court’s jurisdiction is also set out in various legislations relating to employment and labour issues. Of relevance to the case at hand is the LRA which not only recognizes CBAs but also sets out the procedure to be followed in their negotiation and registration. The Act also provides an elaborate procedure for settling trade disputes arising thereunder in Parts VIII and IX. A trade dispute under Section 2 of the LRA is described in the following manner:-

trade dispute? means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers? organisation and employees or trade unions, concerning



any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union; ...”

42. Under Part IX when a trade dispute is not resolved through conciliation Section 73(1) of the LRA stipulates that such a dispute may be referred to the ELRC by either of the parties. The role played by the ELRC in that instance is clearly indicated by the title of Part IX which reads ‘Adjudication of disputes’...
43. It follows therefore that the ELRC at this stage is tasked with the responsibility of determining the trade dispute between the parties which in our view, includes the disagreement with regard to the terms of the CBA or what the parties refer to as the economic dispute between them.
44. A careful reading of the TSC case reveals that this Court did not hold that the ELRC had no jurisdiction at all to determine economic disputes revolving around CBAs. The full bench appreciated that the ELRC had no jurisdiction to deal with the economic dispute therein because the compulsory jurisdictional procedure on dispute resolution as set out under Part VIII of the LRA had not been followed...
45. Having expressed ourselves as herein above what is the extent of the ELRC’s role in resolving the dispute pertaining to the terms of the CBA in question? Is it as suggested by the appellant that the court is restricted to implementing the minimum standards set out under the EA or wages orders published by the government under the *Labour Institutions Act*?
46. Section 26(2) of the EA provides that-

Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee than the terms provided in this Part and Part VI, then such favourable terms and conditions of service shall apply.”

We find that the above provision not only allows parties to a CBA to agree on terms that are more favourable than the minimum terms and conditions of employment set out by the EA and Wages Order but also empowers the ELRC to issue such favourable terms...
47. However, the power to do so by the ELRC ought to be exercised judiciously and on a case by case basis where parties are unable to agree on the terms of a CBA. The court should ensure it does not substitute its preference with that of the parties’ freedom to agree on the terms of employment. The court ought to be guided by the Wage Guidelines issued by the government. In this case the applicable guidelines were the revised guidelines which came into force on 1<sup>st</sup> November, 2005. We note that those guidelines were brought to the attention of the ELRC then known as the Industrial Court by the Ministry of finance vide a letter dated 23<sup>rd</sup> November, 2005.
48. Under the guidelines, the prime elements of determining wages are listed as realized productivity gains, the ability of the economy and employers to sustain increased labour costs and the cost of living...
50. Consequently, a court faced with a question of wage increment ought to take into account productivity, cost of living and the ability to pay by the employer...”



41. Coming back to the issue for determination in this dispute, the Claimant submitted that wage increase be based on CPMU report at 9.36%, House Allowance be at 30% of basic pay subject to a minimum of Kshs. 6000 and effective date be 1<sup>st</sup> January, 2020.

42. Guided by the CPMU report on the monetary clauses and noting that the Respondent did not proffer any proposal to the court or during negotiations and conciliation on the proposals made by the Claimant, the court awards as follows:

Clause 1A - Basic Minimum Wages

10% above statutory minimum wage

Clause 1B - Annual Wage Increase

5% for the 1<sup>st</sup> year and a further 5% for the 2<sup>nd</sup> year

Clause 2 - House Allowance

15% of basic salary

Clause 3 - Probation Period

As per Claimant's proposal

Clause 4 - Hours of Work

As per Claimant's proposal

Clause 5 - Payment of overtime

As per Claimant's proposal

Clause 6 - Annual Leave

21 days as per section 28 of *Employment Act*

Clause 7 - Sick Leave

30 days on full pay followed by 30 days on half pay in any period of one year.

Clause 8 - Maternity and Paternity Leave

As per *Employment Act*

Clause 9 - Compassionate Leave

As per rule 11 of the Regulation of Wages (General) Order

(1) An employee desiring to take leave on compassionate grounds shall by prior arrangement with the employer, be granted such leave up to his earned leave entitlement under paragraph 9 and the leave taken shall be subsequently set off against his annual leave.

(2) An employee may, in addition to the leave provided for in subparagraph (1), be granted five days' compassionate leave without pay in any one year

Clause 10 - Uniforms

As per Claimant's proposal

Clause 11 - Protective Clothing

As per Claimant's proposal

Clause 12 - Medical Treatment



As per Claimant's proposal

Clause 13 – Redundancy

As per Claimant's proposal for (a) to (d)

(e) 16 days per year worked

Clause 14 – Warning

As per Claimant's proposal

Clause 15 – Termination of Employment

As per Claimant's Proposal

Clause 16 – Summary Dismissal

As per section 44 of [Employment Act](#)

Clause 17 – Salary Advance

As per Claimant's proposal

Clause 18 – Leave Travelling Allowance

Kshs. 2000 per year

Clause 19 – Funeral Expenses

Employer to make a contribution based on distance to burial place and make reports as per section 24 of [Employment Act](#)

Clause 20 – Certificate of Service

As per section 51 of [Employment Act](#)

Clause 21- Lunch/Meals

As per Claimant's proposal

Clause 22 – Retirement

As per Claimant's proposal

Clause 23 – Paid Leave for Trade Union Purposes

Leave to be granted by employer based on exigencies of duty

Clause 24 – Bonus

As per Claimant's proposal

Clause 25 – Acting Appointment

As per Regulation of Wages (General) Order

Where an employee is required to work for a period of not less than one month in an occupation or grade for which the basic minimum wage prescribed under paragraph 3 is higher than the basic wage normally earned by the employee, he shall be paid an acting allowance at a rate not less than the difference between that higher basic minimum wage and his basic wage

Clause 26 – Promotion

As per Claimant's proposal



Clause 27 – Gratuity

As per Claimant’s proposal save that the rate shall be 15 days per year of service worked

Clause 28 – Agency Fee

As provided in section 49 of *Labour Relations Act*

Clause 29 - Effective Date and Duration

The proposal of the Claimant is that the effective date be 1<sup>st</sup> January, 2020 and that the CBA be effective for 24 months meaning that it would cover the period up to December, 2021.

The court is alive to the burden this would cause to the Respondent in terms of payment of arrears of wages, a situation that may become too burdensome to the Respondent.

The court however does recognize the role of the Respondent in delaying this suit which should not entirely be to the detriment of the Claimant’s members.

It is therefore the opinion of the court that the effective date of the CBA be 1<sup>st</sup> January, 2025 meaning that the employees of the Respondent would have to forego the wage increases for the period from January, 2020 to December 2024. This has also taken into account the effects of COVID-19 on the operations of the Respondent.

43. This being an economic dispute, each party shall bear its costs of this suit.
44. The parties are directed to draft and sign the CBA within 30 days.
45. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 6<sup>TH</sup> DAY OF MARCH 2025.**

**MAUREEN ONYANGO**

**JUDGE**

