



**Kenya Union of Commercial, Food and Allied Workers v Eldoret Packers Limited
(Cause E011 of 2021) [2025] KEELRC 1365 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1365 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E011 OF 2021
MA ONYANGO, J
MAY 9, 2025**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
ELDORET PACKERS LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* to represent the employees engaged 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 parties have a recognition agreement signed on 26th April, 2017 which is still valid and subsisting. The parties were in the process of negotiating their first collective bargaining agreements (CBA) when they reached a deadlock.
4. It is the Claimant’s case that on 4th March, 2019 it forwarded to the Respondent its proposals for negotiation of the CBA to cover the period 2020/2022 and requested the Respondent for its counter proposals to enable the parties commence negotiations for the said CBA.
5. The Claimant avers that in all the meetings held by the parties for purposes of negotiations the Respondent refused to provide its counter proposals to the Claimant and remained uncooperative.
6. The Claimant avers that following the failed negotiation it reported a dispute to the Cabinet Secretary, Ministry of Labour and Social Protection by letter dated 2nd September, 2020. That the dispute was accepted and the Chief Industrial Relations Officer appointed Mr. Timothy Kipruto of Eldoret Labour Office as conciliator.



7. It is the Claimants averment that the conciliator called for a meeting on 25th September, 2020 and also requested the parties to submit their written proposals for the CBA by 24th September, 2020 for the conciliation to commence.
8. The Claimant states that it wrote to the Respondent to grant permission to the shop stewards to enable them attend the conciliation meeting.
9. The Claimant avers that on 23rd September, 2020 the Respondent requested that the meeting of 25th September, 2020 be postponed to 25th November, 2020 since its director was not in the country.
10. The Claimant states that on 16th November, 2020 the conciliator issued a Certificate of Unresolved Dispute following the failure of the parties to agree to compromise the dispute.
11. In the Memorandum of Claim dated 19th February, 2021 the Claimant prays for orders that this court orders the Respondent to sign the 2020-2022 Collective Bargaining Agreement as proposed by the Claimant or gives any other relief as the court may deem fit to grant and that the Respondent be condemned to bear the Claimant's costs of this suit.
12. The Respondent filed a response to the Claimant's Claim in which it admits that it has a recognition agreement with the Claimant and that the Claimant sent it proposals for the CBA for the period 2020-2022. It however denies that it was uncooperative at the meetings held by the parties and states that its Managing Director had travelled out of the country to the United Kingdom on 27th February, 2020 and was expected back by November, 2020 but due to the Covid-19 pandemic lockdown, came back on 11th January, 2021.
13. The Respondent further stated that the Memorandum of Understanding executed between the Tripartite Partners- The Ministry of Labour and Social Protection, The Central Organization of Trade Unions (COTU) and Federation of Keya Employers (FKE) halted all matters touching on employment contracts and collective bargaining Agreements to await normalization of the situation all over the world on account of the Covid-19 Pandemic.
14. It is instructive that to date the Respondent has not submitted its proposals to the Claimant, almost 5 years after normalcy was resumed following control and management of the Covid -19 Pandemic.
15. On 22nd March, 2023 the court was informed that the parties were in the process of attempting out of court negotiations. On 12th June, 2023, 12th July, 31st July, 2023 and 4th October, the court was informed that the parties were still attempting out of court negotiations. The parties having failed to meet, the court on 4th October, 2024 processed the dispute for hearing.
16. This being an economic dispute, the court directed that the Central Planning & Project Monitoring Department of the Ministry of Labour and Social Protection (CPPMD) prepares an economic report to guide the court on the economic issues in the dispute. The parties were thereafter directed to dispose of dispute by way of written submissions and to incorporate their comments on the CPPMD Report in their submissions.
17. In the report it is stated that the Respondent failed to provide any documentary evidence such as books of account and employee data records and further did not respond to the questionnaire sent by the CPPMD which would give guidance for the analysis of the dispute. That the Respondent also declined a physical meeting with CPPMD. The CPPMD report observes that this negates the spirit of collective bargaining and urges the court to emphasize the significance of this important process and compel the Respondent to honour the same.



18. On the consumer price indices the CPPMD states in the report that the rise in the cost of living for the relevant period was 14.32%.
19. The Claimant's submissions are dated 29th February, 2024 while the Respondent's submissions are dated 1st March, 2024.
20. The Claimant submitted that collective bargaining is provided for in the recognition agreement and the wages guidelines. That the negotiations are intended to cushion employees from the vicissitudes of inflation and the ravages of ever rising cost of living.
21. The Claimant further submitted that the right to collective bargaining is enshrined in Article 41(5) of *the Constitution* and that collective bargaining ought to be consensual and in good faith. That collective bargaining further promotes and upholds the rights of employees to fair labour practices, fair remuneration and reasonable working conditions.
22. The Claimant urges the court to adopt its proposals in the face of hostility to collective bargaining by the Respondent.
23. In its submissions the Respondent states that it was not involved in the negotiations and was not given a chance to be heard before the conciliator issued the certificate of disagreement. That the process was one sided and orchestrated to arm-twist the Respondent into signing the CBA.
24. The Respondent submits that Article 41(5) of *the Constitution* and section 7(2) of the *Labour Relations Act* provide for collective bargaining rights of an employer.
25. Relying on the decision in Social Service League, M.P Shah Hospital v Kenya Union of Domestic Hotels Educational Institutions and Allied Workers [2018] eKLR, the Respondent submits that collective bargaining is like a contract and no law has been cited that permits courts to force parties to enter into contracts as contracts are voluntarily entered into.
26. It further submits that circumstances have changed and membership of the union currently stands at 30% as the Respondent declared redundancies following introduction of subsidized fertilizer which was the main line of business of the Respondent.

Analysis and Determination

27. Having summarized the positions of both the Claimant and Respondent and having considered the CPPMD Report, the only issue for determination is whether or not the court should adopt the proposals by the Claimant and compel the Respondent to sign the CBA.
28. Article 41(5) of *the Constitution* provides that every trade union, employers' organisation and employer has the right to engage in collective bargaining. Contrary to the submission of the Respondent that no law compels the court to force an employer to collectively bargain, collective bargaining is provided for under the Bill of Rights in Chapter 4 of *the Constitution* which deals with protection of rights and fundamental freedoms. Collective bargaining is therefore one of the fundamental rights and freedoms that are protected by *the constitution*.
29. Article 19 provides for rights and fundamental freedoms as follows-
 - (1) The Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies.



- (2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.
 - (3) The rights and fundamental freedoms in the Bill of Rights— (a) belong to each individual and are not granted by the State; (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and (c) are subject only to the limitations contemplated in this Constitution.
30. Article 22 provides for enforcement of Bill of Rights. It provides-
 - (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.
31. Article 23 provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including the nature of the right or fundamental freedom; the importance of the purpose of the limitation; the nature and extent of the limitation; the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
32. Collective bargaining as provided for in Article 41 of *the Constitution* is therefore a fundamental right enforceable under Article 22 of *the Constitution* which enjoins this court and all other courts to protect, preserve and to promote the right to collective bargaining and where the same is threatened or violated, to enforce the same through appropriate relief by granting any of the orders set out in Article 23(3) including a declaration of rights; an injunction; a conservatory order; an order for compensation; and/ or an order of judicial review.
33. Besides *the constitution*, section 57(1) of the *Labour Relations Act* provides that an employer who has entered into a recognition agreement with a trade union SHALL conclude a collective bargaining agreement with the recognized trade union. The use of the word “shall” implies that it is mandatory. Where the parties are unable to conclude an agreement on their own, the *Labour Relations Act* provides for reporting of the same as a trade dispute which is referred to conciliation by the Minister for the time being in charge of Labour matters. Where conciliation fails the dispute is reported to the court for adjudication.
34. The instant trade dispute went through all these stages before it reached this court.
35. Section 12(2) and (3) provide for the powers of this court as follows-



- (2) An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer’s organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.
- (3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders: interim preservation orders including injunctions in cases of urgency; a prohibitory order; an order for specific performance; a declaratory order; an award of compensation in any circumstances contemplated under this Act or any written law; an award of damages in any circumstances contemplated under this Act or any written law; an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; or any other appropriate relief as the Court may deem fit to grant.
36. The court further has powers to execute its orders where any party fails to comply with the same.
37. From the foregoing it is clear that the Respondent’s insinuation that this court cannot compel it to enter into a collective bargaining agreement or impose terms of a collective agreement upon the Respondent is not well informed and is based on a wrong understanding of the law on collective bargaining.
38. Having stated the foregoing, it is clear from the evidence on record that the Respondent deliberately refused to cooperate in the negotiations of the CBA by refusing to submit its counter proposals to the unions proposals, by refusing to cooperate during conciliation before the conciliator appointed by the Minister under section 65 of the *Labour relations Act*, and with the CPPMD whose report is provided for under the Wages Guidelines and section 15 of the ELRC Act.
39. In *Kenya Tea Growers Association v Kenya Plantation & Agricultural Workers Union* [2018] KECA 706 (KLR), the Court of Appeal while dealing with a similar issue observed-
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’. The Black’s Law Dictionary 9th Edition defines adjudication as:-
- “The legal process of resolving a dispute; the process of judicially deciding a case.”
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. Our interpretation is guided by the case of *Placer Dome Canada vs. Ontario* (2006) 1 SCR 715,



wherein the Supreme Court of Canada observed that under the presumption against tautology in the interpretation of statutes, every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose.

40. ILO Conventions No. C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) provides:

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

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.

41. In Kenya the *Labour Relations Act* sets out the machinery for collective bargaining and the procedure for resolution of disputes arising from collective bargaining negotiations through conciliation and if the fails, through adjudication by this court.
42. From the foregoing, it is clear that in implementing the right of a trade union to collective bargaining, the court is enforcing a fundamental right and freedom under the Bill of Rights and the court has jurisdiction to do so under *the constitution*, the *Labour Relations Act* and the ELRC Act.
43. In the instant case the Claimant urged the court to adopt its proposals or grant any other orders as it deems just for the end of justice to be realized.
44. I have considered the proposals by the Claimant. Having regard to the minimum terms as provided by law, the Wages Guidelines, the CPPDU Report and the parties last CBA, and noting the refusal of the Respondent to submit its proposals to the Claimant, the Conciliator and the court, the court makes the following awards on the items in the proposals by the Claimant:
- a. Basic Minimum Wages
The court awards that new employees be paid at the statutory minimum wages applicable for the year
 - b. General Wage Increase
The court awards 6% each year based on the Wages Guidelines, the CPPDU Report. Each employee is to be brought to the minimum rate before being awarded general wage increase
 - c. House Allowance
The court awards 15% of basic pay
 - d. Probation Period
To be adopted as per union proposal
 - e. Hours of Work
To be adopted as per union proposal
 - f. Payment of Overtime



As per Union proposal

g. Annual Leave

The court awards 21 days per year

h. Sick Leave

The court awards as per regulation of Wages General Order

Maternity Leave and Paternity Leave

To be as per [Employment Act](#)

Compassionate Leave

Awarded as per Regulation of Wages General Order

Uniforms

As per Occupational and Safety Act based on the needs of each job as may be advised by the Occupational Safety and Health Department

Protective Clothing

As per Occupational and Safety Act based on the needs of each job as may be advised by the Occupational Safety and Health Department

Medical Treatment

As per section 34 of the [Employment Act](#) section

Redundancy

As per section 34 of the [Employment Act](#) section

Warning

As per rule 16 of Regulation of Wages (General) Order

Termination of Employment

As per section 35 as read with section 36 of the [Employment Act](#)

Summary Dismissal

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

Salary Advance

As per union proposal

Funeral Expenses

As per section 24 of [Employment Act](#)

Allow up to 4 workmates to attend burial with leave and at expense of the employer

Certificate of Service

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

Lunch/Meals

To be discussed at next CBA



Retirement

Retirement Age to be 60 years

Payment of Retirement benefits at 15 days per year worked

Paid Leave for trade Union Purposes

Up to 5 days paid leave for elected union officials only

Bonus

To be discussed at future CBA negotiations

Acting Appointment

As per rule 10 of Regulation of Wages (General) Order

Gratuity To be discussed at future negotiations

Agency Fee

As per section 49 of *Labour Relations Act*

Effective Date and Duration

1st June 2025

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 9TH DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

