



**Kenya Union of Domestic, Hotels, Educational Institutions & Hospital
Workers v Board of Management (BOM) Ekwanda Secondary School (Cause
E033 of 2024) [2025] KEELRC 1339 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1339 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E033 OF 2024**

DN NDERITU, J

MAY 8, 2025

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS &
HOSPITAL WORKERS CLAIMANT**

AND

**BOARD OF MANAGEMENT (BOM) EKWANDA SECONDARY
SCHOOL RESPONDENT**

JUDGMENT

I. Introduction

1. The claimant (KUDHEIHA), a trade union representing workers in the sectors expressed in the name of the union, commenced this cause by way of a statement of claim dated 16th October, 2024 seeking for the following reliefs –
 1. That: the honourable court compels the respondent to commence collective bargaining negotiation with the claimant within fourteen days from when the judgment is given
 2. That: the claimant's member working for the respondent should not be subjected to intimidation, coercion or discrimination in any form or manner within their workplace.
 3. That: the respondent to bear the cost of this suit plus the respondent to unwarranted delays caused and the amount used in trying to solve the matter before being filed in court.
 4. Any other relief the court deems fit.
2. As it is the procedure, the statement of claim was accompanied with a verifying affidavit sworn by Thomas Mboya, the Kakamega branch secretary of the claimant, a list of documents, and copies of the listed documents.



3. Though duly served, as per the affidavit of service on record, the respondent did not respond to the claim.
4. On 4th February, 2025 Mr. Osore, industrial relations officer, for the claimant informed that he wished to proceed with the hearing and disposal of the cause by way of written submissions and the court directed as such. The claimant filed written submissions dated 8th February, 2025.

II. The Claimant's Case

5. The claimant's case is expressed in the statement of claim, the documents filed, and the written submissions by its representative.
6. In the statement of claim it is pleaded that the claimant recruited employees of the respondent into its membership and signed a recognition agreement with the respondent dated 21st May, 2018. Subsequently, on 24th May, 2018, the claimant submitted to the respondent a draft collective bargaining agreement (CBA) for perusal, consideration, and negotiation, with a view of reaching a consensus and execution thereof.
7. However, the respondent failed, refused, and or neglected to engage with the claimant despite numerous reminders from the claimant between 2019 and 2024.
8. Ultimately, the claimant referred the dispute – the refusal by the respondent to negotiate a CBA with the claimant - to the Cabinet Secretary (CS), Ministry of Labour and Social Protection, vide a letter dated 6th September, 2023. The CS appointed a conciliator who made numerous efforts to have the parties meet to resolve the dispute but the respondent defied all the numerous invitations to attend the conciliation meetings.
9. The conciliator, Ms Dorcas Ouma, issued a certificate of unresolved dispute on 1st August, 2024 to the effect that despite all the invitations extended the respondent had failed, refused, and or neglected to attend and as such the parties were advised to seek remedy from the court.
10. Documents in support of the foregoing averments by the claimant were filed alongside the statement of claim.
11. It is on the basis of the foregoing circumstances and facts that the court is urged to allow the claim and grant the reliefs as sought. The submissions by the claimant's representative shall be considered in a succeeding part of this judgment.

III. The Respondent's Case

12. As stated in the introductory part of this judgment the respondent did not defend the claim although served as per the affidavit of service on record.

IV. Submissions

13. Mr. Osore for the respondent submitted that the issue in dispute is the refusal by the respondent to negotiate, conclude, and sign a CBA with the claimant as required by Article 41(1)(2) & (5) of *the Constitution*, Section 57(1) of the *Labour Relations Act*, and Part V of the *Employment Act*.
14. It is submitted that the claimant has met the conditions for entering into negotiations for a CBA with the respondent in that it has a duly signed recognition agreement executed on 21st May, 2018 and it has over half membership of the eligible employees of the respondent.



15. It is submitted that the respondent has absolutely no reason for its failure, refusal, and neglect to enter into negotiations for a CBA. It is submitted that the unwarranted conduct by the respondent is unlawful and unconstitutional based on the provisions cited above.
16. The court is urged to allow the claim as pleaded.

V. Issues For Determination

17. The court has carefully and dutifully gone through the pleadings filed, documentary evidence tendered from the claimant, and the written submissions filed by its representative. The following issues commend themselves to the court for determination -
 - a. Whether the cause by the claimant has merits as to entitle the claimant to the reliefs sought; and,
 - b. Who should bear the costs of the cause?

VI. Merits Of The Cause

18. The dispute between the parties is rather straightforward and that is why the representative of respondent rightfully applied to have the matter heard and disposed of by way of written submissions.
19. The undisputed evidence on record is that on differs dates from 2017 to 2024 the claimant recruited membership from employees in service of the respondent culminating in execution of a recognition agreement dated 21st May, 2018. Thereafter, the claimant invited the respondent for negotiations of a CBA.
20. However, the respondent failed, refused, and or neglected to engage. The claimant took up the matter with the CS Ministry of Labour and Social Protection but the respondent ignored numerous invitations by the appointed conciliator to resolve the dispute.
21. Ultimately, on 1st August, 2024 the conciliator issued a certificate to the effect that the refusal by the respondent had resulted in failure of the parties to resolve the dispute. Thereafter, the claimant filed this claim in court.
22. The court has perused the documentary evidence filed in court by the claimant in support of the claim and the court is satisfied that the claimant has proved its case to the required standard to warrant the court to grant and issue the orders sought.
23. As stated elsewhere in this judgment, although duly served, the respondent did not respond to the claim. No defence was thus offered by the respondent and no reason was advanced for its failure to cooperate in negotiations for a CBA.
24. Article 41 of *the Constitution* provides as follows –
 - (1) Every person has the right to fair labour practices.
 - (2) Every worker has the right—
 - (a) to fair remuneration;
 - (b) to reasonable working conditions;
 - (c) to form, join or participate in the activities and programmes of a trade union; and
 - (d) to go on strike.



- (3) Every employer has the right—
 - (a) to form and join an employers' organisation; and
 - (b) to participate in the activities and programmes of an employers' organisation.
 - (4) Every trade union and every employers' organisation has the right—
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
 - (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.
25. The above constitutional rights are further elaborated in Section 57 of the [Labour Relations Act](#) in the following terms –
- (1) An employer, group of employers or an employers' organisation that has recognised a trade union in accordance with the provisions of this Part shall conclude a collective agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.
 - (2) For the purpose of conducting negotiations under subsection (1), an employer shall disclose to a trade union all relevant information that will allow the trade union to effectively negotiate on behalf of employees.
 - (3) All the information disclosed by an employer as specified in subsection (2) is confidential and shall not be disclosed by any person to a person who is not engaged in the negotiations.
 - (4) An employer is not required to disclose information that—
 - (a) is legally privileged;
 - (b) the employer cannot disclose without contravening a prohibition imposed on the employer by any law or an order of any court;
 - (c) if disclosed, may cause substantial harm to the employer or employee; or
 - (d) is private personal information relating to an employee, unless an employee consents to the disclosure of that information.
 - (5) If there is a dispute about what information is required to be disclosed in accordance with the provisions of this section, any party to the dispute may, in writing, refer the dispute to the Cabinet Secretary for conciliation.
 - (6) If a dispute remains unresolved, after it has been referred to the Cabinet Secretary under subsection (5), any party to the dispute may refer the dispute to the Employment and Labour Relations Court under a certificate of urgency.
 - (7) In any dispute about an alleged breach of confidentiality, the Employment and Labour Relations Court may order that the right to disclosure of information be withdrawn for a period specified by the court.
 - (8) No person shall disclose any confidential information disclosed under this section to a person who is not a party to those negotiations.



26. The refusal by the respondent to engage with the claimant to come up with a negotiated CBA is not only unwarranted but also unlawful and unconstitutional based on the above provisions of the law. It is conduct that does not encourage or enhance industrial harmony and peace and must be condemned and discouraged.
27. The court has said enough in demonstrating that the claim herein has merits and the same is allowed with costs.

X.Orders

- a. This cause is allowed as follows –
 - i. The respondent be and is hereby ordered and compelled to engage with the claimant and negotiate, conclude, and sign a CBA for registration within 30 days of this judgment.
 - ii. The respondent shall not in any way or manner harass, intimidate, or victimize its employees who are members of the claimant and a perpetual injunction is hereby issued to that effect.
- b. Costs of the cause to the claimant.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 8TH DAY OF MAY 2025.

.....

DAVID NDERITU

JUDGE

