



Kenya Engineering Workers Union v Crystal Industries Limited (Cause E540 of 2023) [2025] KEELRC 1921 (KLR) (27 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1921 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E540 OF 2023
SC RUTTO, J
JUNE 27, 2025

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
CRYSTAL INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. It is common cause that the parties herein have a recognition agreement as well as a Collective Bargaining Agreement [CBA] dated 30th July 2018.
2. It is the Claimant's assertion that the Recognition Agreement and opening clause of the CBA are clear that the CBA covers all the unionisable employees of the Respondent, including 71 employees who have been on fixed-term contracts.
3. The Claimant has further stated that in line with the Recognition Agreement and the CBA, it requested the Respondent to convert the said 71 employees who have been on fixed-term contracts to permanent and pensionable terms but the Respondent declined.
4. This prompted the Claimant to invoke Section 62 of the *Labour Relations Act*, 2007 by reporting a trade dispute to the Ministry of Labour and Social Protection.
5. The Conciliator invited parties for conciliation meetings and later released his report and recommendations of which was accepted by the Claimant. The Respondent declined the report, prompting the Claimant to file this suit.
6. Against this background, the Claimant now seeks the following reliefs against the Respondent:
 - a. That the Honourable Court be pleased and find the action of the Respondent to place the 71 grievants on fixed term contract/casual to be in violation of the parties CBA and declare it Null And Void.



- b. That, all the unionisable employees who have been in the Respondent employment for more than three [3] months and those on fixed contracts be converted into permanent and pensionable employment with immediate effect taking into account all employment data and details of employment.
 - c. That, the Respondent to issue the grievants with appointment letters of employment taking into account and capturing the individual data on the grievant's date of appointment of the 1st contract.
 - d. That, the Respondent to meet the costs of this suit.
 - e. That, any other Relief the Honourable Court might deem fit to grant.
7. The Respondent countered the Claim through its Statement of Response dated 8th February 2025. The Respondent avers that it produces metalware, and as such, its business is dependent on the availability of aluminium and/or metal products in the market to enable it produce its wares.
 8. That the nature of the Respondent's business and the uncertainty in the availability of raw materials necessary for its business dictate the style in which the Respondent runs its business, and the terms on which it employs personnel.
 9. The Respondent further contends that it has every right to run its business anyhow it sees fit as long as the same is legal. The Respondent maintains that its actions have always been legal.
 10. The Respondent further avers that due to the uncertainty in availability of raw materials in its industry, it was forced to engage its employees on fixed term as this makes it easy to deal with employees when raw materials are unavailable in the market, thus affecting the business productivity and profit margins.
 11. The Respondent asserts that it has not engaged the employees on fixed-term basis for a long period as their employment is not continuous as falsely alleged. It is the Respondent's contention that there have been gaps in their engagement as the company sometimes does not renew their fixed-term contracts due to low availability of raw materials, leading to a reduction in production of its wares.
 12. The Respondent avers that it made the Claimant Union well aware of the reasons as to why it needed to engage its employees on a fixed-term basis, well before they entered into a CBA, and the Claimant did not dispute such practice on the Respondent's part.
 13. The Respondent further avers that it is operating within the confines of the law and rightfully exercising its right to run its business as it so wishes and has not contravened any law.
 14. The Respondent avers that the CBA between it and the Claimant Union does not dictate that the unionisable employees only have to be engaged on permanent and pensionable terms.
 15. According to the Respondent, its actions are fair and in strict compliance with the provisions of *the Constitution* and all other relevant laws, and that all of its actions regarding how it engages employees are fair and legal.
 16. The Respondent further contends that it has not contravened the provisions of Section 42 of the *Employment Act* as falsely alleged, given that the employees are on fixed-term contracts and have not been kept on probationary contracts for a long period as falsely alleged.
 17. On account of the foregoing reasons, the Respondent has asked the Court to dismiss the Claim herein with costs.



18. On 19th March 2025, both parties herein consented to have the matter determined by way of documentary evidence pursuant to Rule 59 of the Employment and Labour Relations Court [Procedure] Rules, 2024.
19. Subsequently, the Court directed the parties to file and exchange written submissions within specified timelines.

Submissions

20. On its part, the Claimant submitted that there were no gaps in the grievants' contracts before renewal. The Claimant further submitted that it was not consulted before the grievants were engaged on fixed term basis.
21. It was the Claimant's position that the prayers sought in the Claim are merited as the fixed term contracts violate the parties' CBA and all unionisable employees must enjoy the terms of the CBA in line with Section 59 of the Labour Relations Act.
22. On the Respondent's part, it was submitted that at no point in time has it engaged any person as a casual employee hence the Claimant's argument that the same should be made permanent and pensionable does not suffice.
23. The Respondent has further submitted that when it entered into a CBA with the Claimant, it was already engaging its employees on fixed-term basis and who now form part of the unionisable employees. The Respondent further posited that it has every legal right to engage employees on fixed-term basis given that it is recognized by law. In support of this position, the Respondent placed reliance on the case of *Krystalline Salt Limited v Kwekwe Mwakele & 67 others* [2017] eKLR.
24. It was the Respondent's further contention that it has committed no wrong in choosing to engage its workforce on fixed-term basis and those who are not on fixed-term basis form part of the management and are not unionisable.
25. The Respondent further submitted that the CBA does not dictate or provide that it can only engage employees on permanent and pensionable terms. To reinforce its argument, the Respondent referenced the case of *Samuel Chacha Mwita v Medical Research Institute* [2015] eKLR.
26. The Respondent further submitted that its employees do not qualify to be categorized as casual employees hence Section 37 of the Employment Act does not apply to them.

Analysis and Determination

27. Flowing from the pleadings, the evidentiary material on record as well as the rival submissions, the following issues stand out for determination:
 - a. Whether the engagement of the Respondent's employees on fixed-term basis is in violation of the CBA executed by the parties;
 - b. Whether the Claimant is entitled to the remedies sought.

Violation of the terms of the CBA?

28. The gist of the Claimant's case is that the Respondent has declined to convert the terms of service of 71 of its employees who are serving on a fixed-term basis to permanent and pensionable terms contrary to the CBA in place.



29. Disputing the Claimant's position, the Respondent has contended that the CBA in place does not dictate that the unionisable employees only have to be engaged on permanent and pensionable terms.
30. The Respondent further contends that it has every right to run its business anyhow it sees fit as long as the same is legal. To this end, the Respondent has maintained that its actions have always been legal.
31. In support of its case, the Claimant annexed to the Memorandum of Claim a copy of the CBA executed by both parties herein on 30th July 2018.
32. The Court has carefully perused the said CBA and notably, there is no provision that provides for the terms of engagement between the Respondent and its unionisable employees.
33. Evidently, the Claimant has anchored its argument on Clause 1 of the CBA, which provides that "the first three months of engagement shall be treated as probationary period".
34. With tremendous respect to the Claimant, the aforementioned provision in the CBA does not prescribe a specific form of engagement between the Respondent and the unionisable employees. It merely provides for the probationary period, which is essentially the period where an employer assesses a newly recruited employee's performance, skills, and suitability for the job, before confirmation.
35. The *Employment Act*, 2007, recognizes various forms of employment contracts, including piece work, casual employment, fixed-term contracts, and permanent employment with pension benefits. In this regard, parties [employer and employee] to an employment contract have the freedom to enter into and set the terms of the employment contract, subject to the statutory minimum requirements. This includes the form of employment.
36. In this case, the Respondent has engaged the unionisable employees on fixed-term basis, which is a recognized form of employment under the *Employment Act*.
37. It is the Respondent's case that it opted for this form of employment due to the uncertainty in the availability of raw materials in its industry, as this makes it easy to deal with employees when raw materials are unavailable in the market, thus affecting the business productivity and profit margins. Notably, the Claimant has not disputed this position.
38. It is not in doubt that the form of employment is determined by an interplay of factors, for instance, the nature of the work, the needs of the business, or the employer's operational requirements.
39. Therefore, the Respondent cannot be faulted for electing to engage its employees on fixed-term basis to suit its business demands and operational requirements.
40. What's more, the general principle is that the Court cannot micromanage the operations of an employer unless there is a clear violation of the law or a breach of contract. As such, the Court cannot dictate the manner of engagement between the employer and the employees.
41. The Court also agrees with the Respondent that the employees on fixed-term contracts cannot be converted to permanent and pensionable employment as they are not serving on a casual basis and therefore do not fall under Section 37 of the *Employment Act*.
42. In light of the foregoing, the Court finds that the Claimant has failed to prove that the Respondent has breached any provision of the CBA or the law, for that matter, by engaging some of its employees on fixed-term basis. Therefore, the reliefs sought are not sustainable.



Orders

43. In sum, the Court finds no merit in the Claim and consequently, it is dismissed in its entirety with an order that each party bears their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 27th day of June 2025

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Okaya instructed by Mr. Makale [Union rep]

For the Respondent Mr. Ondego

Court Assistant Millicent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159[2][d] of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* [Chapter 21 of the Laws of Kenya] which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

