



**Bakery Confectionery Food Manufacturing & Allied Workers Union (K)
v Brava Food Industries Limited; Bood & 2 others (Contemnor) (Cause
E899 of 2022) [2025] KEELRC 2275 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2275 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E899 OF 2022**

**L NDOLO, J
JULY 31, 2025**

**IN THE MATTER OF AN APPLICATION ON BEHALF OF BAKERY CONFECTIONERY
FOOD MANUFACTURING & ALLIED WORKERS UNION (K) AGAINST
HUSSEIN HASSAN BOOD, ALI MOHAMMED AHMED AND BACHIR
MOHAMMED MAHAMOUD FOR AN ORDER OF COMMITTAL TO CIVIL
JAIL FOR DISOBEYING JUDGMENT/DECREE AND ORDERS OF THIS COURT**

BETWEEN

**BAKERY CONFECTIONERY FOOD MANUFACTURING & ALLIED
WORKERS UNION (K) CLAIMANT**

AND

BRAVA FOOD INDUSTRIES LIMITED RESPONDENT

AND

HUSSEIN HASSAN BOOD CONTEMNOR

ALI MOHAMMED AHMED CONTEMNOR

BACHIR MOHAMMED MAHAMOUD CONTEMNOR

RULING

1. By its application brought by Notice of Motion dated 24th February 2025, the Applicant seeks the following orders:
 - a. Leave to lift the Respondent’s veil of incorporation and to cite its Directors; Hussein Hassan Bood, Ali Mohamed Ahmed and Bachir Mohammed Mahamoud for contempt of court, for contravening and violating the Judgment and Decree of this Court dated 24th October 2024 and 28th October 2024, respectively;



- b. An order of committal against the said Hussein Hassan Bood, Ali Mohamed Ahmed and Bachir Mohammed Mahamoud for contempt of court for contravening and violating the Judgment and Decree of this Court dated 24th October 2024 and 28th October 2024, respectively and for their committal to prison for such period as this Court may deem fit;
 - c. In enforcing the committal orders above and as a consequence of any non-attendance, a Warrant of Arrest directing the Officer Commanding Station, Athi River Police Station, to cause the arrest and presentation of Hussein Hassan Bood, Ali Mohamed Ahmed and Bachir Mohammed Mahamoud, to show cause why they should not be committed to civil jail and for sentencing;
 - d. That the CBA proposals shared with the Respondent, which are attached to this application, and which have not elicited any counter-proposals, be adopted by this Court as a basis of a validly concluded CBA to be executed by the Respondent within 14 days from the date of delivery of ruling, and in default, the Deputy Registrar of the Court be pleased to execute the same on behalf of the Respondent and the same be presented for registration in the usual manner.
2. The application is supported by an affidavit sworn by the Applicant's General Secretary, Danchael Mwangure and is based on the following grounds:
- a. That vide a judgment delivered on 24th October 2024, this Court directed the parties to, among other things, negotiate, conclude and present a duly executed CBA for registration by the Court within 30 days from the date of the judgment;
 - b. That the Applicant extracted a decree encompassing the said terms of the judgment, together with a penal notice on consequences of non-observance of the judgment, and served the same upon the Respondent, together with a forwarding letter dated 30th October 2024, scheduling a meeting for negotiation of the CBA on 6th November 2024 at 10.00 am;
 - c. That the Applicant forwarded a copy of the said letter together with a copy of the judgment, decree and penal notice, which were received and acknowledged by the Respondent, by affixing the company stamp and signing on 30th October 2024;
 - d. That despite several meetings being called on 18th October 2024, 20th October 2024, 23rd October 2024 and 6th November 2024, the Respondent has failed to negotiate the CBA. Further, despite receiving CBA proposals from the Applicant, and despite scheduled meetings to deliberate, negotiate and execute the CBA, the Respondent has repeatedly postponed meetings called by the Applicant without tangible reasons and eventually abandoned the negotiating table;
 - e. That it is apparent that despite back and forth correspondences, the Respondent has failed to negotiate, conclude and sign the CBA within the period specified by the Court;
 - f. That by virtue of the aforesaid correspondences, appearances in court by its duly appointed Advocates, the Respondent has not only been served with the judgment but is aware of it and attendant decree and penal consequences arising therefrom;
 - g. That there are no orders of stay or any pending appeal or review application that would imperil the negotiations as directed by the Court. As a matter of fact, the Respondent's challenge by way of review was dismissed by this Court vide a ruling delivered on 23rd January 2025;



- h. That the conduct of the Respondent demonstrates deliberate defiance of the rule of law as all attempts to negotiate the CBA both prior to the filing of the instant dispute and post judgment, have been rendered futile, and the Applicant moves the Court for redress through the instant application to enforce the decision of the Court;
 - i. That the Applicant continues to hold onto a favourable judgment and decree whose fruits it cannot enjoy owing to the Respondent's refusal to obey the judgment and decree of this Court;
 - j. That the cited contemnors are the Directors of the Respondent. They are responsible for implementing decisions on behalf of the Respondent Company, which they have failed to do and cannot hide behind the veil of incorporation to defeat court processes;
 - k. That the said Directors have deliberately failed to implement the judgment and decree of this Court as ordered and ought to be held responsible for breaching the terms of the judgment and decree of this Court, in their individual capacity, hence the prayer to lift the corporate veil;
 - l. That it is in the interest of justice that the orders sought are granted.
3. The named Directors; Hussein Hassan Bood, Ali Mohamed Ahmed and Bachir Mohammed Mahamoud oppose the application by their separate but identical replying affidavits sworn on 28th April 2025. An additional and similar replying affidavit was sworn on the same day, by the Respondent's General Manager, Osman Abdi Salat.
 4. In their replying affidavits, Hussein Hassan Bood, Ali Mohamed Ahmed and Bachir Mohammed Mahamoud admit that they are Directors of the Respondent. The Directors term the application as misconceived, incompetent and an abuse of the court process.
 5. The Directors depone that the Respondent executed a Recognition Agreement dated 23rd June 2020, pursuant to a judgment of the Court delivered on 20th May 2020 in ELRC Cause No 431 of 2019: Bakery Confectionery Food Manufacturing & Allied Workers Union v Brava Food Industries Limited.
 6. They further depone that the matter has been the subject of two other court decisions in ELRC Cause No E899 of 2022 and ELRC Miscellaneous No E060 of 2022.
 7. The Directors state that following the judgment of the Court delivered on 24th October 2024, directing commencement of negotiations and submission of a duly executed CBA within 30 days, the parties held a meeting aimed at negotiating the terms of the CBA.
 8. They claim that the CBA negotiations were slowed down by proceedings pending before other statutory bodies, pointing to an application by the Respondent for revocation of the Recognition Agreement, pending before the National Labour Board.
 9. The Directors accuse the Applicant of boycotting a balloting exercise ordered by the National Labour Board. They state that the balloting exercise proceeded on 28th February 2025 at the Respondent's premises in Athi River, with thirty-five (35) employees participating and voting against their affiliation with the Applicant Union.
 10. It is deponed that because of the short notice given for the conduct of the balloting exercise, it was not possible to secure the attendance and participation of employees stationed outside Nairobi; particularly those in the Marketing Department stationed in Nyanza, Coast and Western Regions. According to the Directors, twenty-six (26) employees were affected.
 11. The Directors state that a follow up request to the National Labour Board to facilitate a separate balloting exercise to cover these employees, had not been respondent to.



12. The Applicant's General Secretary, Danchael Mwangure swore a further affidavit on 14th May 2025, reiterating the contents of his affidavit in support of the application.
13. Mwangure stresses that the Respondent did not adhere to the judgment of the Court delivered on 24th October 2024, whose directions were very specific being; to negotiate, conclude and sign a CBA within a period of 30 days.
14. He states that despite repeated efforts by the Applicant towards procuring the Respondent's counter-proposals to inform the negotiations, the Respondent had not responded.
15. Mwangure accuses the Respondent of attempting to scuttle observance of the orders of the Court, by persisting in pursuit of its de-recognition dispute before the National Labour Board. He points out that this pursuit ran against two findings by this Court that the National Labour Board had no jurisdiction to consider the de-recognition dispute as it was fashioned as an appeal against the judgment of this Court delivered in ELRC Cause No E431 of 2019.
16. He also refers to ELRC Miscellaneous No E060 of 2022: Brava Food Industries Limited v Bakery Confectionery Food Manufacturing & Allied Workers Union (K) where it was held that the proceedings in pursuit of de-recognition pending before the National Labour Board were in fact, incompetent. He points to a similar finding by this Court in its judgment delivered on 24th October 2024.
17. Mwangure asserts that the balloting exercise ordered by the National Labour Board was a nullity as it proceeded from a dispute that was not properly before the National Labour Board. He states that the Applicant Union declined to participate in the balloting exercise as it amounted to furtherance of an illegality, bearing in mind the two findings by this Court.
18. By its application, the Claimant accuses the Respondent and its Directors of contempt of court.
19. Black's Law Dictionary (Ninth Edition) defines contempt of court as:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
20. In the persuasive decision in Johnson v Grant [1923] SC 789 at 790 Lord President Clyde underscored the importance of preserving the rule of law, stating that

“...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”
21. In its decision in Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] KEELRC 656 (KLR) this Court rendered itself thus:

“The reason why courts will punish for contempt of court...is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.



A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

22. In its written submissions in support of the application, the Claimant cites the South African decision in *Burchell v Burchell* (ECJ 010/2006) ZAECHC 35 (3 November 2005) where the elements for civil contempt were set out as follows:

“There are essentially four elements that must be present to make a case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that;-

- a. The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant.
- b. The defendant had knowledge of or proper notice of the terms of the order.
- c. The defendant has acted in breach of the terms of the order, and
- d. The defendant’s conduct was deliberate.”

23. The order which triggered these proceedings is contained in my judgment dated 24th October 2024, by which I directed the parties to negotiate, conclude and present a duly executed Collective Bargaining Agreement for registration by this Court within thirty (30) days from the date of the judgment.

24. A reading of the four identical replying affidavits sworn by the Respondent’s three Directors and the General Manager reveals that they were all aware of the subject order and its import.

25. It is also on record that after the judgment, the Claimant made efforts to reach out to the Respondent, with a view to complying with the order of the Court; but the Respondent thwarted every such effort, firstly by postponing meetings and finally by abandoning the negotiating table.

26. The Directors and the General Manager assign their failure to comply with the court order on what they believe to be pending proceedings before the National Labour Board. The Court understands these proceedings to be the Respondent’s application for de-recognition of the Claimant Union.

27. The position taken by the Respondent’s Directors and the General Manager in this regard, is very disturbing. I say so because the impropriety of the proceedings before the National Labour Board has been the subject of judicial pronouncement, not once but twice.

28. In his ruling dated 20th January 2023, delivered in ELRC Miscellaneous Application No E060 of 2022: *Brava Food Industries Limited v Bakery Confectionery Food Manufacturing & Allied Workers Union (K)* and National Labour Board my brother, Ocharo J stated the following:

“...by seeking to have the Agreement revoked by the Interested Party [National Labour Board], the Applicant is without expressly saying so, seeking to vary or quash the Judgment of the Court. The Interested Party is an entity subordinate to the Court and in fact subject to the supervisory powers of the Court. It cannot therefore have the powers to deal with the agreement in the manner sought by the applicant.



If the Applicant was in any way aggrieved by the Recognition Agreement and its execution in the circumstances of the Judgment stated above, the proper forum for them was an application for review to the Court or an appeal against the Judgment.”

29. In my judgment delivered on 24th October 2024, I stated the following:

“I have had occasion to consider the grounds set out in the Respondent’s revocation application and it appears that that the Respondent is in effect seeking a setting aside of the judgment of the Court in ELRC Cause No 431 of 2019: Bakery Confectionery Food Manufacturing and Allied Workers Union (K) v Brava Food Industries Limited, by which the parties were directed to execute a Recognition Agreement and negotiate a CBA...The only thing I will say on this issue is that the National Labour Board has no power to review decisions of this Court, meaning that the application and any proceedings before the Board are a nullity.”

30. With these clear judicial pronouncements, the Court was unable to understand why the Respondent would pursue the de-recognition proceedings before the National Labour Board, and even have the audacity to front them as the reason for disobedience of a clear order of this Court.

31. The Court was further concerned that the National Labour Board, which is a public body funded by tax payers, would allow itself to be used as a theatre for scuttling implementation of court orders. This dangerous Russian roulette must now stop.

32. That said, I affirm that the balloting exercise purportedly supervised by the National Labour Board was a nullity, and the Claimant was on the right side of the law to boycott it.

33. Ultimately, I find that Hussein Hassan Bood, Ali Mohamed Ahmed and Bachir Mohammed Mahamoud being Directors of the Respondent Company, jointly and severally knowingly and wilfully disobeyed the order of this Court issued on 24th October 2024. I consequently cite them for contempt of court.

34. Mitigation and sentencing on 22nd September 2025 at 10.00 am.

35. For good order, I direct that this ruling be served on the National Labour Board.

36. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Amalemba for the Claimant

Mr. Aluku for the Respondent

