



Kenya Union of Commercial, Food and Allied Workers v New Murarandia Farmers Cooperative Society (Cause E003 of 2024) [2025] KEELRC 2143 (KLR) (21 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2143 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E003 OF 2024**

**ON MAKAU, J
JULY 21, 2025**

BETWEEN

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

AND

NEW MURARANDIA FARMERS COOPERATIVE SOCIETY RESPONDENT

JUDGMENT

1. The claimant is a registered trade union and brings this suit on behalf of its members who are employed by the respondent Cooperative Society which deals with Coffee Production.
2. The claimant and the respondent have a Recognition Agreement and together they have concluded several Collective Bargaining Agreements (CBAs). The last CBA covered the period from 1st October 2018 to 30th September 2020 but they have differed on the subsequent CBA for 1st October 2020 to 30th September 2022. The matter was referred to the Cabinet Secretary for conciliation but no agreement was reached, hence the instant suit where the claimant prayed for;
 - a. General Wage increase at 12 percent in the first year (2020/2021) and 12 percent in the second year (2021/2022).
 - b. The parties to sign the CBA within 30 days from the date of judgment.
 - c. Costs of the suit.
3. The respondent filed defence contending that the delay in concluding the CBA was caused by the arrogance on the part of the claimant who has included the respondents' Secretary Manager as unionised employee bringing about conflict of interest. It further averred that it is not able to give any salary increase due to low production and loan burden which has forced it to lay off part of its work force. Therefore, it prayed for the suit to be dismissed with costs.



4. After the close of the pleadings, the court requested the Central Planning and Project Monitoring Department (CPPMD) to give an economic report/opinion to guide the court in resolving the dispute herein. The respondent did not cooperate and despite several adjournments, it only availed scanty information to the CPPMD who prepared a report dated 24th January 2025. I will say more on the CPPMD report shortly.
5. The suit was disposed by written submissions. In brief, the claimant submitted that the parties negotiated the 2020 - 2022 CBA but differed on several clauses; that the respondent should sign the CBA and worry about affordability later; that the alleged redundancies are neither here nor there because the case is already in court and it has to be decided with finality; that the respondent has been very uncooperative but CPPMD has filed its report in the court. Consequently, the court was urged to enter judgment as prayed in the Memorandum of Claim.
6. The respondent on the other hand submitted on three issues but the only relevant one to this case was, whether the respondent would be capable of fulfilling the financial obligations in the proposed new CBA. In brief, it submitted that even if it was compelled to sign a new CBA, the stark financial realities render such CBA effectively unenforceable due to its economic circumstances. It contended that it is currently grappling with severe financial constraints, including outstanding bank loan of Kshs.113,356,500 and unpaid staff dues exceeding Kshs.21,000,000 as indicated in Inquiry Report by the Commission for Cooperatives.
7. It was further contended that there is decline in coffee deliveries as farmers are taking their produce to other factories for better prices. Further that, any additional wage bills on allowance packages cannot be sustained by the respondent's revenue streams. That it has already undertaken cost-cutting measures, including redundancies in a desperate attempt to remain operational. Consequently, the court was urged to decline the new CBA because it will not be commercially practicable and it may drive the respondent into complete insolvency.
8. To fortify the above submission, reliance was placed on the case of Kenya Tea Growers Association & Another vs Kenya Plantation and Agricultural Workers Union (2012) eKLR where the court held that economic sustainability of a CBA must be assessed before compelling the parties to sign it to avoid an exercise in futility.

Issues for determination and analysis

9. There is no dispute that the signing of the CBA for 2020-2022 between the parties herein is now long overdue. The issues for determination are: -
 - a. Whether the claimant is entitled to the prayer for General wage increase.
 - b. Whether the respondent should be compelled to sign the proposed CBA for 2020-2022.
 - c. Whether the claimant is entitled to the costs of the suit.

Whether General Wage increase is justified

10. The claimant prayed for General Wage increase by 12 percent in 2020/2021 and 12 percent in 2021/2022. The respondent contended that it is not in a position, financially to award any wage increase. It cited low production of coffee, preference by farmers to sell their coffee elsewhere, unpaid terminal dues and huge loan burden it is facing. However, the respondent did not file any Audit Report on its financial status to support the alleged financial situation. The main evidence filed is a portion



of Inquiry Report signed on 27th July 2021 which mainly indicates that the respondent was being mismanaged and that some people were to be surcharged.

11. The court also notes that the respondent was given an opportunity to give information to the CPPMD for use in preparing an economic report to guide the court to determine the prayer for wage increase but it failed to cooperate. Consequently, I make an adverse inference against it that it withheld the information because it was against its case.
12. The CPPMD went ahead to prepare its report based on the information given by the respondent. Table 1 in the CPPMD's report dated 24th January 2025 summarised the respondent's annual Labour force and cost thereof for 2020-2023. It shows that the unionizable staff increased from 11 to 13 in the said period; the management staff remained 4 while the casual were 60. The total number of staff rose from 75 to 77.
13. The cost of unionisable labour rose from Kshs.4,034,900 to Kshs.4,934,673 while that of casual labour rose from Kshs.5,141,223 to Kshs.7,892,198. The respondent withheld the information about the cost of the management labour and therefore the total cost of labour remains unknown to the CPPMD and this court.
14. Likewise, the financial position of the respondent was not analysed because despite request and also directions from the court, the respondent failed to provide the audited accounts for the period 2020-2023. Again, I make an adverse inference against the respondent that the reason for withholding the audited accounts was because the information was against its case.
15. The CPPMD in its report analysed the factors that must be considered in compensating employees including rise in the cost of living (inflation), productivity, and wage differential. On inflation factor, the CPPMD observed that this factor seeks to restore the purchasing power of basic consumer goods and services which has been eroded over the lifespan of the retiring CBA. In this case, the retiring CBA ran from 1st October 2018 to 30th September 2020 and during that period the CPPMD noted that Consumer Price Index was 9.39 percent or 4.7 percent compensation each year in respect of inflation. It observed that the respondent is domiciled in Murang'a and its staff fall under the New Kenya CPI Group which had a CPA of 9.39 percent or 4.7 percent each year.
16. Under Article 41(2) (a) of *the Constitution*, every employee has the right to fair remuneration. Consequently, I find that in view of the inflation rate demonstrated by the CPPMD report, the claimant is entitled to the prayer for general wage increase in order to compensate the members of the union for the lost purchasing power during the period of the 2020-2022 CBA.

Wage increase rate

17. It is trite law that a balancing act has to be deployed in determining the amount of wage increase to ensure that the employees are well compensated and that the goose that lays the eggs does not die. As earlier noted, the respondent withheld information about its financial status and the wage differential which would have assisted in the analysis of the dispute herein.
18. The CPPMD identified only three challenges affecting the business including high cost of production, outdated machinery, and heavy debts to Commercial banks, Saccos, Millers and lack of basic skills by farmers.
19. In its analysis of the implication of the demand by the claimant of a general wage increase at 12 percent each year, (24 percent for the 2 years), the CPPMD assessed the annual increase to be Kshs.0.59 million in the 1st year and Kshs.0.66 million in the 2nd year totalling to Kshs.1.25 million for the entire period of the CBA.



20. The CPPMD noted that during negotiations, the representatives of the two sides deadlocked at 7 percent each year totalling to 14 percent for the two years of the CBA. However, the respondent objected to the same and offered nil wage increase for the entire period. It further contended the secretary manager who negotiated the said wage increase was conflicted since it emerged that she is also a member of the union despite being the manager of the respondent.
21. I find merits in the respondent's objection and treat the offer of 7 percent wage increase per year to be invalid due to the conflict of interest on the part of the respondent's negotiating team. Whether or not the management staff should benefit from the new CBA or whether they should be members of the union is not an issue herein as the court has not been invited to determine the same. It is however an issue that should be of interest to the respondent to litigate upon on another day.
22. Suffice it to say that the CPPMD went on to analyse compensation based on the CPI (inflation) of 4.7 percent per year and found that the wage bill would increase by Kshs.0.23 million in the first year and Kshs.0.24 million in the second year, totalling to Kshs.0.47 million for the entire period of the CBA in dispute.
23. In *Kenya Tea Growers Association v Kenya Plantation & Agricultural Workers Union (2012) eKLR*, the court held that: -
- “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.”
24. Despite the fact that the respondent withheld information about its financial position, I still have sufficient material upon which to determine the issue of general wage increase. Having considered the report by the CPPMD and the material presented by the parties, I find that an award of 5 percent wage increase per year would compensate the members of the claimant for the period of the 2020-2022 CBA. This translates to a total of 10 percent for the period of the CBA starting 1st October 2020 to 30th September 2022.
25. The said increase is sustainable considering the total cost of unionisable labour indicated in Table 1 of the CPPMD's report. The wage bill will increase from Kshs.4,930,000 in the year 2020/2021 by Kshs.246,500 to Kshs.5,176,500. In the second year, (2021/2022) the wage bill will increase by Kshs.258,825 to Kshs.5,433,250.

Conclusion

26. I have found that the claimant is entitled to the prayer for general wage increase. I have also found that an award of 5 percent wage increase per year (10 percent for the two years) is reasonable and sustainable based on the evidence before the court. Consequently, I enter judgment for the claimant against the respondent in the following terms: -
- a. General wage increase of 5 percent for the year 2020/2021 and 5 percent for the year 2021/2022.
 - b. The parties to sign a CBA incorporating the said wage increase within 30 days of this judgment.
 - c. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 21ST DAY OF JULY, 2025.

ONESMUS N MAKAU

JUDGE



Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

