



**Amalgamated Union of Kenya Metal Workers v Crater Automobiles(Nairobi)  
Nathu Khan Ltd (Employment and Labour Relations Cause E036 of 2023)  
[2024] KEELRC 309 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 309 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E036 OF 2023  
HS WASILWA, J  
FEBRUARY 22, 2024**

**BETWEEN  
AMALGAMATED UNION OF KENYA METAL WORKERS ..... CLAIMANT  
AND  
CRATER AUTOMOBILES(NAIROBI) NATHU KHAN LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant instituted this suit by a memorandum, of claim dated August 2, 2023, claiming that the respondent has refused to sign and rubberstamp the CBA negotiated and agreed upon by both parties. The claimant sought for the following reliefs; -
  1. The respondent be compelled to sign and rubberstamp the CBA and three schedule forms to enable the claimant to process by filling copies of the signed CBA to the CPMU department of labour.
  2. The respondent be ordered to meet the cost of the suit to be paid to the claimant.
  3. The honourable court be at liberty to make any other order it deems fit.

**Claimant's case**

2. The claimant is described as a trade union registered under the Laws of Kenya with the objective of advocating for the labour rights of commercial labour employees among others. The respondent on the other hand is a limited liability company registered under the *Companies Act* and engages in motor vehicles trade business in Nakuru.
3. The claimant states that both parties herein have a recognition agreement and have negotiated several Collective Bargaining Agreements with the last one dated October 29, 2018 with effective date from November 1, 2018 for two years.



4. It is averred that due to Covid-19 Pandemic, the parties agreed to forgo the year 2021 and negotiate for the year 2022 and 2023 and on that basis, the Union forwarded a copy of the proposed CBA to the respondent for their amendments and or confirmation. Consequently, the parties negotiated on the CBA and agreed on all clauses of the CBA but that the Respondent has refused to sign the same.
5. The claimant stated that the matter was reported to the labour office, where a conciliator was appointed to preside over the matter but the respondent failed to attend any of the meetings, necessitating the issuance of certificate of disagreement and the filling of this case.
6. The claimant stated that the refusal by the respondent to sign the CBA was in violation of Section 57(1), 59(4), 59(5) and 60(1) of the Labour Relations Act as read with articles 41(1), 47(1) and 162(2) (a) of the Constitution.
7. During hearing the claimant called Joshua Achando, the claimant's Internal Relations Officer, who testified as CW-1 and adopted his witness statement dated October 27, 2023 and explained that the Kes 5800 House allowance was in the previous CBAs which has always been accepted by the respondent and was merely lifted and included in the current CBA.
8. On cross examination, the witness testified that in their circumstances the employer cannot pay a consolidated salary as per section 31 of the Employment Act. He testified that house allowance is 15% of an employee's basic salary. He testified that their members are from different cadres earning salaries ranging from Kes. 15,716 to Kes 34,198. He added that the agreement to settle at Kes 5800 for house allowance for all members was based on economic survey.
9. In reexamination, he testified that the 15% proposed by the respondent is already in the previous CBAs which had been agreed and signed by the parties.

#### **Respondent's case**

10. The respondent entered appearance and filed a response to claim on the September 22, 2023 denying the entire claiming and stating that as per the description of the claimant and the mandate of the respondent, the Union is not the one mandated to handles the plight of the respondent's workers or represent them.
11. The respondent however admitted to signing a recognition agreement and negotiating several other CBAs but that in the current CBA, they have not agreed on most of the clauses of the CBA, hence they declined to sign the CBA.
12. Among the clauses which the respondent disagreed on is the clause where the respondent seeks to include a separate flat rate House allowance sum of Kes 5800 across all cadres, when the house allowance is factored in in the employee gross salaries. He added that the sum of Kes 5,800 is more than 15% of the basic pay for some employees, therefore that they are not willing to accept the said terms, hence the decline in signing the said CBA.
13. The respondent stated that they did not receive any notice from the labour office in line with the dictates of section 62(2) of the Labour Relations Act, seeking for conciliation of the matter raised before this Court, therefore that the allegations that the refuse to attend conciliation is far from the truth.
14. During hearing, the respondent called Mumina Hassan, the Respondent's accountant, as RW-1. The witness adopted her witness statement dated September 23, 2023 and stated that the Respondent pays all its employees a consolidated salary. She admitted that in the previous CBAs the house allowance of Kes 5800 had been included but that the said CBAs had been signed through coercion, therefore that upon the expiry of the former CBA they refused to sign the new one because of the extra House



allowance of Kes 5800. She told this Court that if the new House allowance of Kes 5800 is removed, they are willing to sign the current CBA.

15. She also testified that they never refused to go for the conciliatory meeting and stated that the respondent was not served with an invitation letter.
16. Upon cross examination, the witness testified that indeed Mr. Karanja was coerced to sign the former CBA but does not have evidence of the same. She admitted that in the current Draft CBA, wages and House allowances are negotiated as different items. The witness maintained that the house allowance pay is included in the consolidated pay.
17. On re-examination, RW-1 stated that the only issue of contention is with regard to the Kes 5800 house allowance which they are no longer willing to pay and instead that in the event the Union wish to have wages and house allowances negotiated separately then to consider only 15% of the basic pay as House allowance and not the uniform figure of Kes 5800, which they are demanding.

### **Claimant's Submissions.**

18. The claimant submitted on three issues; whether the respondent should be compelled to sign the CBA, whether this court can determine any CBA clause/ matter for the parties and whether costs should issue.
19. On the first issue, it was submitted that the parties herein have negotiated several CBAs and in all those CBAs the issue of wages was negotiated separately from the House allowance. However, that on the onset of Covid-19 parties agreed to forgo the year 2021 and negotiate a CBA commencing January 1, 2022 to December 31, 2023, which parties negotiated all the clauses and agreed, though the respondent refused to comply when the same was a copy paste from the previous CBAs.
20. The applicant submitted that the claim for house allowance is a right of an employee as provided for under section 31 of the Employment Act. He added that the minimum wages give the irreducible minimum that should be paid to an employee, similarly that the 15% house allowance is the irreducible minimum for house allowance pay but a Union and or an employee has a right to negotiate an increase of the same to a limit that is agreeable by both parties.
21. On the allegations that the said Mr. Karanja was coerced into signing the previous CBAs, the claimant submitted that the argument is far from the truth because the said CBAs dates way back in 2006 and the same have lapse and been negotiated and signed by the same Mr. Karanja from time to time. In any case that no evidence of the said coercion was tabled before to this court to justify the allegations.
22. It was submitted that refusal by the respondent to sign the new negotiated CBA is in violation of section 57(1), 59(4), 59(5) and 60(1) of the Labour Relations Act as read with articles 41(1), 47(1) and 162(2)(a) of the Constitution and sections 12 of the Employment and Labour Relations Court Act.
23. The claimant urged this Court to be guided by the decision in Amalgamated Union of Kenya Metal Workers v Load Trailer, ELRC Cause No 1340 of 2016 , in which the honourable Justice Maureen Onyango granted each and every CBA clause, which the respondent had refused to negotiate.

### **Respondent's Submissions.**

24. The respondent on the other hand submitted on three issues; whether the out dated CBAs that are being relied on were signed by a person authorized to do so, whether the action by the claimant goes against the aspect of voluntary negotiations and whether the proposed house allowance is equivalent to the house allowance as provided at section 26 of the Employment Act.



25. On the first issue, it was submitted that the respondent's witness stated in her testimony under oath that Mr. Karanja stopped working at the respondent company due to the mental challenges he had developed over the years. In fact, that he was not working at the accounts department and therefore not authorized to sign the CBAs that have been flagged around by the claimant. It was argued that it is when the respondent learnt of the error of having the house allowance separate from the monthly wages yet it was paid as a consolidated sum, that the respondent declined to sign the CBA until the issue is settled. He added that the claimant has not at any point stated why they would have the CBA signed by someone other than an officer at the accounts department yet the issue relates to money. Further that since the CBA was signed by coercion, the same is irregular *ab initio*.
26. On whether the action by the claimant goes against the the aspect of voluntary negotiations, the respondent submitted that the claimant's action of attempting to force the respondent into signing the CBA even with the disagreed clause is going against the aspect of voluntary negotiations. The respondent being the company that pays the money ought to be given an opportunity to negotiate and arrive at a figure that is favorable to both parties. It was argued that by forcing the respondent into signing the CBA, the claimant will be risking causing friction between them and the respondent and this is a situation which will be unconstitutional and it will cause tension among the involved parties. They thus prayed that parties be directed to have the matter taken back to the conciliator for purposes of negotiations and settlement on the CBA terms.
27. In support of this position, the respondent relied on the case of [Kenya Quarry and Workers Union v Mineral Enterprises Limited](#) Cause E891 of 2022 [2023] KEELRC 681 (KLR) 16 March 2023 Ruling, in which honourable Justice B O M Manani referred a matter to the conciliator for mediation.
28. They also relied on the case of [Kenya Union of Printing Publishing Paper Manufacturers & Allied Workers v Highlands Paper Mills Ltd](#) [2013] eKLR, where this court stated that parties could not be forced into signing CBAs and as such the claim was referred back to the conciliator for further negotiations.
29. Similarly, the respondent urged this court to refer the matter to a conciliator for negotiations since the respondent was not served with invitation letter for the former alleged negotiation.
30. On whether the proposed house allowance is equivalent to the house allowance as provide for under section 26 of the [Employment Act](#), the Respondent submitted that the proposed sum of Kes. 5,800.00 goes against the required 15% of the basic salary that is provided for by the law. Hence, if this court finds that the respondent should stop paying consolidated wages as they have always done, then prayed that the house allowance be tabulated at 15% of the basic wages of each employee as opposed to the claimant's proposal. They however maintains that they have been paying consolidated wages as supported by the case of [Arasa & another v Benori Agencies and Services Limited](#) Cause 242 of 2017 [2022] KEELRC 116 (KLR) 17 May 2022 Judgment.
31. In conclusion, the respondent submitted that the instant claim is ripe for dismissal with costs to the respondent. Noting that negotiations have never taken place and the parties have never engaged a conciliator to handle this claim. Additionally, that the CBAs that have been availed before the honourable court were irregularly signed by a person who was not authorized to sign.
32. I have examined all evidence and submissions of the parties herein.
33. The main contention by the claimants is that the respondents have refused to sign a renewed CBA with them despite it containing provisions similar to what has been in existing one.



34. The respondents on their part have indicated that the only contention is on house allowance which they aver if resolved, they are ready to sign.
35. The house allowance clause in issue relates to an omni bus provision giving all workers a house allowance of 5,800/= despite their salary.
36. According to the respondents this clause will cause some workers to earn more house allowance than even their salaries which is an illegality.
37. I have looked at the contentious clause which provides as follows;-
- “Every employee shall in addition to his/her basic salary be paid kshs.5,800/= house allowance per month for both years of the CBA.”
38. A CBA is a negotiated agreement between a union and the employers or employer’s organization. Ordinarily a CBA being an agreement between parties the court should have minimum interference in the same.
39. Section 60 (6) of LRA provides as follows;-
- “The Industrial Court shall not register a collective agreement that
- (a) conflicts with this Act or any other law; or
- (b) does not comply with any directives or guidelines concerning wages, salary levels and other conditions of employment issued by the Minister.”
40. My read in to this clause show that a CBA may not be considered valid if it conflicts with the Act or any other law.
41. Section 31 (1) of the *Employment Act* 2007 on the other hand provides as follows;-
- “(1) An employer shall at all times, at his own expense, provide reasonable housing accommodation for each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, as rent, in addition to the wages or salary of the employee, as will enable the employee to obtain reasonable accommodation.
42. The issue of house allowance as it is in the law is payable in addition to payment of wages or salaries.
43. As per the *Regulation of Wages (General) (Amendment) Order 2022*, the wages or salaries payable are provided inclusive or excluding house allowance.
44. The house allowance payable is not indicated but the practice which has gained notoriety in law in Kenya has been to pay house allowance at 15% of the basic salary.
45. If indeed the claimants insist that the house allowance should be a standard figure of 5,800/= irrespective of the amount of salary payable, this would be to sanction a provision contrary to law.
46. The amount of house allowance should either be negotiated as a percentage or be at least 15% of the basic salary whichever is greater.
47. It is therefore true that the insistence by the claimant is not pegged on the law and cannot be sanctioned by this court.



48. The claim therefore must fail and the parties must continue negotiating on this clause before a new CBA is signed.

49. Each party will bear its costs.

**RULING DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of:-

Ondiege for Claimant – present

Oteyo for Respondent – present

Court Assistant – Fred

