



**Board of Management Ebusakami Girls Secondary School v Kenya Union
of Domestic Workers, Hotels and Educational Institution (KUDHEIHA)
(CBA E258 of 2023) [2024] KEELRC 137 (KLR) (7 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 137 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CBA E258 OF 2023
JK GAKERI, J
FEBRUARY 7, 2024**

BETWEEN

**BOARD OF MANAGEMENT EBUSAKAMI GIRLS SECONDARY
SCHOOL APPLICANT**

AND

**KENYA UNION OF DOMESTIC WORKERS, HOTELS AND EDUCATIONAL
INSTITUTION (KUDHEIHA) RESPONDENT**

RULING

1. The Collective Bargaining Agreement (CBA) herein came up for registration on 26th October, 2023.
2. Both the Union and the Ministry of Labour and Social Protection were represented but the employer was absent.
3. Registration of the CBA was deferred to 2nd November, 2023 on which date Mr. Tarus for the employer informed the court that the former Chairperson of the School's Board of Management (herein after BOM) signed the CBA without consent of the full Board of Management.
4. The court placed the file aside at 9.49 am.
5. At 12.25 pm, Dr. Deborah Amukowa told the court that she was the Chairperson of the BOM and signed the CBA after the Secretary had signed and the former Principal has since retired. She stated that only the Executive Board of school discussed the CBA and it was not ratified by the full Board of Management and as such did not meet the threshold for registration and required revisiting.
6. According to the Chairperson, the Board of Management was not given proper advice by the Secretary, the school Principal.
7. The Chairperson prayed for time to file a formal objection to the registration of the CBA.



Response

8. The union argued that it signed the CBA with the BOM and the secretary and chairperson of the BOM signed as did the union's Branch Secretary and prayed for its registration.
9. The court granted the school 21 days to file and serve the objection to the registration of the CBA and the union was accorded 14 days to file and serve its response.
10. Hearing was scheduled for 18th December, 2023 on which date the employer was absent.
11. Mr. Shiraku for the union informed the court that he had received the Chairman and Principal's objection and the union had filed its response and prayed for registration of the CBA.
12. In its response, the union denies allegations a, b, c, d and e.
13. It is the union's case that on 27th September, 2022, it sent a CBA proposal to the Management of the school for purposes of review or counter offer.
14. That the parties met on 24th February, 2023 and the full Board of Management had a counter proposal on 20th February, 2023 as per the applicant's minutes of the meeting held on 24th February, 2023.
15. That the parties met on 16th June, 2023 and subsequently signed the CBA on 23rd June, 2023.
16. The union submitted that Dr. Deborah Amukowa and Grace Mudaki (Principal) signed on behalf of the school and the CBA was forwarded to the Ministry for registration and there was no objection.
17. That after retirement of the Principal, the BOM took a u turn on the CBA and the objection proposes to abolish the gratuity clause.
18. The union submitted that the School's action was contrary to the provisions of Article 41(5) of *the Constitution* of Kenya, 2010 and amounted to unfair labour practice as the CBA had been signed pursuant to the provisions of Section 59(4)(a) of the *Labour Relations Act*, 2007.
19. On 18th December, 2023, the court set a ruling date and directed counsel for the union to serve the notice.
20. Since the beginning of the year, the court has endeavoured to obtain a copy of the formal objection from the Respondent's counsel without success, which accounts for the late preparation of the ruling.
21. Similarly, the school did not file submissions to reinforce and urge its case for the court to sustain its objection.
22. The Ministry of Labour and Social Protection did not participate.
23. Noteworthy, by a Notice of Appointment dated 23rd November, 2023, the Office of Attorney General indicated that it had been appointed to represent the BOM Ebusakami Secondary School and did not file the formal objection to the registration of the CBA.
24. The singular issue for determination is whether the School's objection to the registration of the CBA dated 23rd June, 2023 is merited.
25. The simple answer is that the school has no documented objection to the registration of the CBA.
26. However, on 2nd November, 2023, Dr. Deborah Amukowa, the Chairperson of the School Board orally submitted that the draft CBA on record did not meet the threshold for registration as it was not considered and discussed by the full BOM for purposes of approval.



27. That it was only considered by the Executive Board.
28. The foregoing position is vindicated by the minutes of the school's BOM meeting held on 24th February, 2023 availed by union where it was reported that the Executive BOM had met and considered the union's proposal and developed suggestions to be tabled before the full BOM and the minutes of the meeting were read out to the members of the BOM.
29. Mr. Thomas Mbuya stated that as the earlier CBA lapsed in December 2021 and some clauses required change, there was need for review of the CBA and negotiations with the union.
30. As no counter proposal had been made, the meeting resolved that the counter proposal be drafted for discussion by the full BOM.
31. There is no evidence on record that either the Executive BOM or the full BOM prepared and discussed the counter proposal.
32. It is however unclear to the court why and in what circumstances the Chairperson of the BOM signed the CBA and is now urging that it does not meet the threshold for registration contending that she was misled by the then Principal of the school who was the Secretary to the BOM.
33. Why did she sign if the counter proposal had not been tabled and discussed by the full BOM?
34. Being the Chairperson of the BOM, Dr. Deborah Amukowa must have been aware of the fact that the full BOM had neither considered nor approved the CBA.
35. Needless to belabour, the BOM is the policy making body of the school and the principal decision maker. It provides leadership and the strategic direction to the school and has power to hire and fire staff within its jurisdiction and shoulders liabilities as appropriate.
36. The foregoing notwithstanding, it is common ground that a CBA is an agreement negotiated between a trade union and an employer or employers or employers organization and is invariably consensual.
37. The *Labour Relations Act*, 2007 defines a collective agreement as;

“a written agreement concerning any terms and conditions of employment made between a trade union and an employer, a group of employers or employers organization.”
38. Section 2 of the *Employment Act*, 2007 adopts a similar definition.
39. In the case of a CBA, the parties have ample opportunity to negotiate and re-negotiate the draft CBA at any time before it is registered as it has no force of law prior to registration as ordained by Section 59(3) of the *Labour Relations Act*, 2007.
40. Similarly, agreements may be renegotiated at any time, should either of the parties raise an issue that require further deliberation.
41. If the Chairperson or members of the BOM of Ebusakami Secondary School have misgivings about the draft CBA and desire that it be renegotiated and agreed upon by the full BOM, it is only fair that the request be granted bearing in mind that this is the BOM that will implement the CBA once it is registered.
42. In the end, the court is persuaded that other than dismissing the school's objection on a technicality, which is contrary to the provisions of Article 159(2) of *the Constitution* of Kenya, 2010, the more effective way of resolving the dispute is to accord the School's BOM time to discuss the CBA and if



need be renegotiate any contentious clause(s) with the union and present the agreed version of the Cabinet Secretary, Ministry of Labour and Social Protection expeditiously.

43. In the premises, the court will defer registration of the CBA for 45 days to allow the full BOM of the school, discuss the CBA and engage the union on any contentious clause(s) for its consideration.
44. This dispute leaves no doubt that the opportune time to register a CBA is as soon as it is duly executed by the parties as other circumstances could and do rise if there is delay.
45. In the circumstances, it is only fair that parties bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 7TH DAY OF FEBRUARY 2024

DR. JACOB GAKERI

JUDGE

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 has 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.

DR. JACOB GAKERI

JUDGE

