



**Kenya Union of Commercial and Food Allied Workers v Transmattresses Limited  
(Cause E009 of 2023) [2024] KEELRC 219 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 219 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE  
CAUSE E009 OF 2023  
MA ONYANGO, J  
FEBRUARY 8, 2024  
(FORMERLY NAKURU ELRC NO. 31 OF 2020)**

**BETWEEN**

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

**AND**

**TRANSMATTRESSES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant, Kenya Union of Commercial, Food and Allied Workers is a Trade Union registered as such within the laws of Kenya to represent the interests of employees in the sectors set out in the membership clause of its constitution.
2. The Respondent is a Limited Liability Company registered under the [Companies Act](#) and engages in Supermarket business within the Republic of Kenya.
3. The Claimant and the Respondent have a Recognition Agreement signed and dated 26<sup>th</sup> April, 2017 which is in force. The parties negotiated and executed their first Collective Bargaining Agreement (CBA) dated 28<sup>th</sup> September, 2017 which came into effect on 1<sup>st</sup> May 2017 for a duration of twenty-four months up to 30<sup>th</sup> April 2019. The CBA is still in force by virtue of Clause 27 thereof which provides that the CBA will continue in force until amended by mutual agreement of the two parties. The said clause further provides that a party wishing to amend the CBA should give three months' notice of such intention.
4. It is the Claimant's case that on 29<sup>th</sup> April 2019 it wrote a letter to the Respondent notifying it of the intention to review the CBA and forwarded its proposals which detailed the Clauses of the CBA which it wished to be amended and those to be retained. That on 30<sup>th</sup> April and 19<sup>th</sup> June 2019 the Claimant sent supplementary proposals to the Respondent on Basic Minimum Wages and Agency Fees.



5. It is the Claimants case that all its efforts to get the Respondent to the negotiation table failed as all the dates it proposed for meetings were not confirmed by the Respondent. The Claimant states that having failed to get the CBA reviewed at their own level, it reported a dispute to the Ministry of Labour under section 62 of the [Labour Relations Act](#) and Mr. Tiktik of Kitale Labour Office was appointed as conciliator.
6. It is the Claimant's averment that the efforts of the conciliator to assist the parties reach agreement failed as the Respondent failed to either attend meetings or provide evidence of poor business performance. That the Respondent's counter proposals and revised counter proposals did not demonstrate any willingness to review the CBA.
7. Following the outbreak of Covid-19 in Kenya in June 2020 the conciliator prepared a report recommending suspension of the negotiations for one year.
8. It is the Claimant's position that the Respondent's operations did not stop during the Covid-19 pandemic even though sales may have reduced. That the Respondent has however failed to produce records to prove the extent of reduced sales during that period.
9. The Claimant states that the recommendations in the conciliator's report constituted a failure to reach agreement and therefore the dispute is properly before this court by virtue of section 69 and 73 of the [Labour Relations Act](#).
10. In its Memorandum of Claim dated 9<sup>th</sup> September 2020 and filed in court on 16<sup>th</sup> September 2020, the Claimant seeks the following reliefs: -
  - i. This Honourable court adopt Claimant's proposals and supplementary proposals as outlined in paragraphs 5 and 6 of the Memorandum of Claim,
  - ii. This Honourable court order the Respondent to sign the 2019-2020 Collective Bargaining Agreement with amendments as proposed by the Claimant,
  - iii. This Honourable Court grant any other relief as it may deem fit.
  - iv. Costs of the suit be borne by the Respondent
11. The Respondent filed a Reply to Memorandum of Claim on 26<sup>th</sup> October 2020.
12. The claim was prosecuted by way of written submissions.

**i. Report of the Central Planning and Project Monitoring Department of the Ministry of Labour and Social Protection**

13. The Central Planning and Project Monitoring Department of the Ministry of Labour and Social Protection normally referred to as CPMU prepared its economic report on the dispute analyzing the economic performance of the Respondent to assist the court in arriving at a fair determination of the economic issues pending before the court. This is in line with the provisions of section 15(5) of the [Employment and Labour Relations Court Act](#) which provides that:
  - i.(5) In the exercise of its powers under this Act, the Court may be bound by the national wage guidelines on minimum wages and standards of employment, and other terms and conditions of employment that may be issued, from time to time, by the Cabinet Secretary for the time being responsible for finance.
14. The court called for and received the report of CPMU on 3<sup>rd</sup> November 2023. Parties were thereafter asked to file submissions to incorporate their comments on the CPMU report.



15. In the report the CPMU observed that it requested the Respondent to submit certain documents which it analyzed and also met both parties physically before it prepared its report. The report observes that the number of unionisable staff engaged by the Respondent during the years 2019, 2020, 2021 and 2022 was 201, 185, 139 and 131 respectively. During the same period the number of management staff was 14, 14 11 and 11 respectively for the years under review. The report states that during peak periods the Respondent recruited casual staff whose count was 2,7,12 and 20 for the years 2019,2020, 2021 and 2022 respectively.
16. The annual labour costs of the Respondent stood at Kshs. 66,755,090 in 2019, Kshs. 63, 737,223 in 2020, Kshs. 16,747,559 in 2020 and 40,895,378 in 2022. Annual labour cost for the management staff over the same period was 7,485,440, 6,187,216, 6,847,886 and 6,735,102 respectively. Casual staff wage bill rose from 537,984 in 2019 to Kshs. 5,115,276 in 2022. It is observed in the report that the ratio of management to unionisable staff was 1:4 during the period under review.
17. With respect to the Respondent's financial position, the Report observes that for the 4 years under review the Respondent posted net profits of Kshs. 42.8, 41.1, 52.6 and 37.4 respectively.
18. The report states that during consultations the Respondent listed the challenges it faces to be-
  - i. High business costs as a result of uncertain global economic hardship,
  - ii. Stiff Competition from other players running like business,
  - iii. High business running costs such as high electricity bills,
  - iv. Low Purchasing power of the citizenry,
  - v. High and varied tax policy and other statutory obligations such as the newly introduced Housing Levy, revised NSSF rates etc.
19. On the compensable factors, the report indicates that the rise in consumer price indices (CPI) over the period of the CBA 2-cycle (May 2017 and April 2019) which endeavors to restore the purchasing power for basic consumer goods and services was 3.02% each year or 6.04% for the two years. That should this be awarded by the court it would lead to an additional wage bill of Kshs. 2,016,003.72 and 2,076,887.03 or a combined figure of Kshs. 4,092,890.75.
20. On improved labour productivity the report states that the wages guidelines require that productivity forms the major factor for any additional wage compensation considerations. That workers should get a share of the wealth they have helped to create. It is noted that the Respondent posted a net profit over the period under review. It is noted that:
  - i. The out-going CBA (2017/2019) had a General Wage increase of 22% for the 1st year and 6% for the second year or a total of 28% for the entire period.
  - ii. The Claimant is demanding for a General Wage increase of 15% for the first year and 15% for the second year or a total of 30% for the entire period of the new CBA Cycle (2019/2021). If applied on the unionisable staff year 2019 annual wage bill of Kshs. 66,755,090, a 15% increase for the 1st year translates to an increase by Kshs. 10,013,263.50 and 15% increase for the 2nd year translates to an increase by Kshs. 11,515,253.03 or a total increase by Kshs. 21,528,516.53 for the entire period.
  - iii. The Respondent in its counter-offer dated 18<sup>th</sup> March 2020 had offered a general wage increment of 3% for the same period which would translate to an additional spending of Ksh. 4,065,384.98.



- iv. The CPI entitlement for the same period would lead to a spending of Ksh 2,016,003.72 in the first year and Ksh 2,076,887.03 in the second year or a total additional spending of Ksh. 4,092,890.75.

### **Determination**

21. I have considered the pleadings and the submissions on record as well as the Central Planning & Project Monitoring Department economic report filed on 3<sup>rd</sup> November 2023. I will proceed to consider each of the items of the CBA that the parties did not agree on and make an award based on the CPMU report and what was submitted to court by the parties.
22. According to the court record, both parties proposed to retain the following clauses as per outgoing CBA:
  - a. Preamble
  - b. Clause 4: Hours of Work
  - c. Clause 5: Probation period
  - d. Clause 6: promotion & Acting Appointments
  - e. Clause 8: maternity / Paternity leave
  - f. Clause 10: study Leave
  - g. Clause 13: Meal
  - h. Clause 18: Work Injury Benefits
  - i. Clause 19: Work Injury Benefits
  - j. Clause 20: Suspension
  - k. Clause 21: Termination of employment
  - l. Clause 22: Summary Dismissal
  - m. Clause 25: Use of Mobile phone

These Clauses are accordingly retained as per outgoing CBA.

### **23. Basic Minimum Wages**

The basic minimum wages in the outgoing CBA are set out in the 1<sup>st</sup> Column in the table below while the proposals by the Claimant are in the second Column of the table.



| Outgoing CBA             | Claimants' Proposal  |
|--------------------------|--|
| a. Basic Minimum Wages   | Category I   |
| Category I: Ksh.12,076   | Shop Assistant furniture assembler,<br>Cook, Pastry, Chef, Turbo Internal<br>Security = Ksh.23,000   |
| Category II: Ksh.12,536  | Category II  |
| Category III: Ksh.13,783 |  |
| Category III: Ksh.16,253 | Receptionist/Customer care/Store<br>Keepers/ General clerk/Back office<br>clerks/ Driver medium size vehicle/<br>Tailor/ Senior shop assistant =<br>Ksh.27,000 |
| Category IV: Ksh.18,352  | Category III   |
| Category V: Ksh.20,317   |  |
| Category V: Ksh.22,752   | Cashier/Drivers heavy Commercial<br>Vehicles, Set ion Heads = Ksh. 35,500  |
| Category IV:Ksh.27,600   | Category III: Head of IT, Chief cashier =<br>Ksh.42,000  |

24. Taking into account the economic analysis by CPMU as set out above, and further taking into account the current statutory minimum wages for the different categories of employees, it is my view that the following increases will be reasonable:



| Category   | Entry Point |
|--|-------------|
| Category I<br>General Labourer   | 15,402      |
| Category II<br>Cook/Turn-boy   | 16,618      |
| Category III<br>Bakery Assistant   | 17,430      |
| Category III<br>Shop Assistant furniture assembler   | 20,718      |
| Category IV<br>General Clerk, Back Office Clerks/<br>Receptionist/storekeepers                       | 23,614      |
| Category V<br>Artisan Grade III/Driver (medium Sized<br>Vehicle)                                     | 26,005      |
| Category IV<br>Artisan Grade II  | 28,070      |
| Category VI<br>Artisan Grade I/Sales Representatives/<br>Cashiers/ Drivers (Heavy Commercial Vehicle | 34,503      |

Basic Minimum Wages to be at least 200 above statutory minimum wages.

25. In awarding the minimum rates of pay I have taken into account the fact that these are entry point wages that affect only new employees and those earning the statutory minimum wages as per Legal Notice No 125 of 1<sup>st</sup> July, 2022 issued by the Cabinet Secretary for Labour. I have increase the statutory by Ksh.200 to ensure the rates are not overtaken by any review of wages that may happen during the life of the CBA
26. I have further considered the fact that the law provides that no employer can pay wages below the statutory minimum rates and that the employees of the Respondent are already earning at least the statutory minimum rates of pay. The percentage increase on the minimum rates is 5% above the statutory minimum rates of pay currently prevailing in the country. General Wage Increase
- i. In view of the fact that these are wages which will be paid in arrears the implementation date for the CBA having lapsed, I award the employees 5% wage increase for the first year of the CBA and a further 5% for the second year of the CBA. The employees will first be brought



to the minimum rate of pay in the CBA if they are below, and then be awarded the general wage increase.

### **27. House Allowance**

- i. This will be retained at 15% of basic salary of each employee as per outgoing CBA. I have taken cognizance of the fact that this item will automatically move up with the wages as it is expressed as a percentage of the same.

### **28. Annual Leave**

- i. The Clause is retained as per outgoing CBA in terms of number of leave days.
- ii. The leave travelling allowance is increased to Kshs. 2000 per year.

### **29. Compassionate Leave**

To be retained as per outgoing CBA

### **30. Sick leave**

To be retained as per outgoing CBA

### **31. Funeral Expenses**

- i. The employer's contribution for coffin is increased to Kshs. 20, 000 for the coffin.
- ii. The rest of the clause is retained as per outgoing CBA.

### **32. Transfers**

- i. Disturbance allowance increased to Kshs. 15,000.
- ii. The rest of the clause retained as per outgoing CBA.

### **33. Safari Allowance**

Retained as per outgoing CBA.

### **34. Medical Treatment**

Retained as per outgoing CBA.

### **35. Uniforms/Protective Clothing**

Retained as per outgoing CBA.

### **36. Retirement**

Retained as per outgoing CBA.

### **37. Redundancy**

Retain as per outgoing CBA.



### **38. Certificate of Service**

Retain as per outgoing CBA.

### **39. Effective date and duration**

- i. The CBA shall come into force on 1.5.2020 and stay in force for a period of 2 years. The period between 1.5.2019 and 1.5.2020 is suspended as proposed by the conciliator in view of the hardships experienced during the Covid-19 Pandemic and in recognition of the Memorandum of Understanding signed by the Tripartite Social Partners (Ministry of Labour and Social Protection, Central Organization of Trade Unions (COTU)(K) and Federation of Kenya Employers (FKE) where at paragraph 3(c) the parties agreed on suspension of negotiation of CBAs.

### **40. New Clauses**

- i. The Claimant proposed 3 new clauses being commuter allowance, annual bonus and agency fees.
  - ii. The proposed clauses on commuter allowance and annual bonus are declined but may be proposed by the Claimant in future CBAs.
  - iii. The proposal on Agency fees is allowed and shall be adopted as provided in section 49 of the [Labour Relations Act](#).
41. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 8<sup>TH</sup> DAY OF FEBRUARY 2024**

**MAUREEN ONYANGO**

**JUDGE**

