



**Kenya Quarry and Mine Workers Union v Mineral Enterprises Limited (Employment and Labour Relations Cause E891 of 2022) [2024] KEELRC 1053 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1053 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E891 OF 2022**

**BOM MANANI, J**

**APRIL 25, 2024**

**BETWEEN**

**KENYA QUARRY AND MINE WORKERS UNION ..... CLAIMANT**

**AND**

**MINERAL ENTERPRISES LIMITED ..... RESPONDENT**

**RULING**

1. The parties to this action have a subsisting Recognition Agreement which obligates them to enter into collective bargaining in terms of section 54 of the *Labour Relations Act*. The two have a Collective Bargaining Agreement (CBA) which was concluded in the year 2018 and which was due to lapse in December 2019.
2. As the law and practice demand, they (the parties) were to re-negotiate the terms of the 2018 CBA in December 2019. However and as fate would have it, the world was struck with the novel Covid 19 pandemic effectively closing the window for such negotiations.
3. As the pandemic slowed down in 2021, the parties commenced the process of renewal of the CBA. As the record demonstrates, they were able to agree on most issues in the draft CBA except for a few. This disagreement triggered the institution of the instant suit through which the Claimant asked the court to compel the Respondent to sign the draft CBA that had been forwarded to it.
4. Recognizing the need to maintain the voluntary nature of the collective bargaining process, the court referred the matter to conciliation in a bid to have the parties iron out their differences in respect of the outstanding terms in the draft. The referral order was issued on 16<sup>th</sup> March 2023.
5. On 25<sup>th</sup> September 2023, the parties informed the court that all the areas of disagreement had been resolved save for the commencement date for the draft CBA. They asked for time to resolve the issue.



6. In recognition of the need to allow the parties room to amicably resolve the issue, the court adjourned the cause to 18<sup>th</sup> October 2023 for mention to record a consent. However, on this date, there was still no agreement on the issue.
7. The parties asked for more time to finalize discussions on the matter. As a result, the court adjourned the cause to 1<sup>st</sup> November 2023 when it was hoped that an agreement would have been reached on the outstanding issue.
8. On 1<sup>st</sup> November 2023, the parties attended court and indicated that they had failed to agree on the commencement date for the CBA. As such, they asked the court to determine the matter.
9. Following this request, the court asked the parties to file their respective submissions on the single question regarding the commencement date for the draft CBA. This, they did.
10. On 14<sup>th</sup> November 2023, the court confirmed that both parties had filed submissions. As a result, it (the court) reserved its ruling for 14<sup>th</sup> December 2023.
11. The ruling was delivered as scheduled. The court indicated that absent agreement between the parties on the commencement date for the draft CBA, the effective date for the instrument will be the date on which it will be executed by them and registered in court. This order was in recognition of the fact that the court cannot unilaterally backdate the effective date for the CBA.
12. It would appear that after the parties had asked the court to determine the effective date for the draft CBA, the conciliator released her report dated 11<sup>th</sup> December 2023 in which she indicated that they had failed to agree on the date. As such, she had recommended that they consider meeting in the middle on this aspect.
13. For some reason, neither of the parties informed the court about the conciliator's aforesaid recommendation. This is notwithstanding that at the time the matter came up for ruling, they both were apparently in possession of the conciliator's report which had been issued on 11<sup>th</sup> December 2023.
14. That said, the conciliator did not resolve the question of the commencement date for the draft CBA. All that she reported was that the parties had not agreed on the matter and that her recommendation was that they meet in the middle on it.
15. Apparently, the parties were yet to buy into the conciliator's recommendation even on the ruling date. Otherwise, nothing would have stopped them from recording a consent in terms of the recommendation before the court rendered its decision on the matter.

### **The Application for Review**

16. The Claimant has now come to court to ask that it (the court) reviews its ruling of 14<sup>th</sup> December 2023 with the consequence that the commencement date for the draft CBA is as recommended by the conciliator. The application is grounded on several grounds to include the following: -
  - a. That there is an error on the face of the record;
  - b. That the court did not indicate the effective date for the new CBA;
  - c. That the Claimant's members will suffer irreparable loss if the court does not indicate the effective date for the new CBA;
  - d. That the report by the conciliator indicates that the Respondent wanted the CBA to commence on 1<sup>st</sup> January 2023.



17. The Respondent does not accede to the application. According to it, the parties failed to agree on the commencement date for the CBA and left the matter to the court for its decision.
18. It is the Respondent's view that the court correctly rendered itself on the matter by directing that absent consensus on the issue, the CBA shall become effective from the date on which the parties shall append their signatures on it and have it registered in court.

### **Analysis**

19. It is true that the conciliator's report indicates that the Respondent had proposed 1<sup>st</sup> January 2023 as the effective date for the CBA. However, the Claimant rejected this proposal and it insisted on 1<sup>st</sup> July 2021 as the instrument's effective date.
20. In effect, there was no agreement between the parties regarding the effective date for the proposed CBA. It is for this reason that they left the matter to the court for determination.
21. The law on review of decisions rendered by the Employment and Labour Relations Court's orders is now well settled. Under rule 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016*, the court can only review its decision if: there is an error on the face of the record; new matters which were not within the knowledge of the parties at the time of rendering the decision despite the exercise of due diligence but which would have impacted the court's decision had they been brought to its attention have arisen; there is need to clarify the decision sought to be reviewed; or there is sufficient reason to seek review of the decision (see *John Obonyo & 5 others v Kenya Engineering Workers Union* [2021] eKLR and *Joseph Ayora Omwena v Multiscope Consulting Engineering Limited* [2021] eKLR).
22. The instant application does not meet any of these parameters. The Claimant does not point to any error on the face of the record to warrant the request for review. Similarly, the Claimant does not point to any new matter that was outside its knowledge at the time that the ruling of 14<sup>th</sup> December 2023 was delivered and which would have impacted the ruling had it been brought to the court's attention.
23. It is not the Claimant's case that the court ruling of 14<sup>th</sup> December 2023 requires clarification. And neither has it been demonstrated that there are sufficient reasons to warrant review of the impugned ruling.
24. The fact of the matter is that the parties were unable to agree on the commencement date for the proposed CBA. As a result, they submitted the issue to the court for resolution.
25. The court arrived at the conclusion that it could not unilaterally backdate the effective date for draft CBA without the concurrence of the parties. As such and in line with the applicable law, the instrument's effective date was declared to be the date on which it shall be signed by the parties and registered in court.
26. This order is in plain language. It does not require interpretation. As such, the parties ought to move as directed in order to breathe life into the draft CBA. They should: -
  - a. Execute the instrument by appending their signatures on it.
  - b. Present the instrument to court for registration and issuance of the relevant certificate.

### **Determination**

27. The upshot is that: -
  - a. The application dated 10<sup>th</sup> January 2024 is unmerited.



- b. Consequently, it is dismissed.
- c. In order to obviate further court tussles over the issue, it is hereby directed that the process of executing and presenting the draft CBA for registration by the court should be finalized within 45 days from the date of this order.
- d. I make no order as to costs.

**DATED, SIGNED AND DELIVERED ON THE 25<sup>TH</sup> DAY OF APRIL, 2024**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant/Applicant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties 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.

**B. O. M MANANI**

