



**Kenya Engineering Workers Union v Mabati Rolling Mills Limited (Cause E100 of 2023) [2024] KEELRC 1566 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1566 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E100 OF 2023**

**M MBARŪ, J  
JUNE 20, 2024**

**BETWEEN  
KENYA ENGINEERING WORKERS UNION ..... CLAIMANT  
AND  
MABATI ROLLING MILLS LIMITED ..... RESPONDENT**

**RULING**

1. The claimant filed an application dated 18 March 2024 under the provisions of Section 12 of the [Employment and Labour Relations Act](#), Section 74 of the [Labour Relations Act](#) and seeking an order;  
  
The court deem fit and invoke Rule 37 of the [Employment and Labour Relations Court \(Procedure\) Rules](#) by directing the Central Planning and Monitoring Unit (CPMU), Ministry of Labour to file a report in the court within 30 days.
2. The application is supported by the affidavit of the general secretary, Wycliffe Nyamwata who avers that the order sought is provided for under Rule 37(1) of the [Employment and Labour Relations Court \(Procedure\) Rules](#), 2016 (the Court Rules)
3. The court in the ruling delivered on 7 December 2023 declined the claimant’s application dated 11 September 2023 which was requesting documents as provided for under Section 57 of the [Labour Relations Act](#), 2007 (the LRA). For the court to arrive at a just decision, a professional report by CPMU is necessary to assist the parties and the court to arrive at a fair and just decision.
4. In reply, the respondent filed the Replying Affidavit of Morara Samson Matunda the human resources manager who aver that the application by the claimant does not fulfill the threshold required under Rule 37(1) of the [Court Rules](#).
5. In the Memorandum of Claim dated 11 September 2023 the claimant seeks that the court to make a finding that the refusal by the respondent to produce documents for negotiations to be unfair and in



bad faith and therefore the court to adopt the proposal of the claimant and order parties to sign the same. That all the clauses in the CBA that are not in dispute to remain the same as per the outgoing CBA.

6. Based on the prayers sought, the claim concerning general wage increment is based on the production of documents by the respondent and the application for the involvement of the CPMU is an afterthought that is not supported by pleadings or evidence.
7. On 7 December 2023, the court pronounced itself on the application for production of documents by the respondent thus dispensing with the claimant's prayers 4.1 in the Memorandum of Claim. Upon the ruling, the claim was determined and the claimant cannot sustain a cause of action against the respondent in light of the prayers sought.
8. The claimant having been supplied with all the relevant financial information of the respondent during the CBA negotiations process in the year 2023 has not disclosed the relevance and purpose of the CPMU in the dispute. This application is in bad faith and should be dismissed with costs.
9. Both parties attended court for oral submissions. The claimant filed written submissions.

### **Determination**

10. The issue herein is whether the court should invoke the provisions of Rule 37(1) of the *Court Rules* and refer the matter to the CPMU to address and file a report with the court.
11. The court is established under the provisions of Article 162 of the *Constitution* as a specialized court to address employment and labour relations. In its mandate, the court recognizes the tripartite nature of employment and labour relations. Additionally, the court relies on ILO conventions and standards and in CBA negotiations, *ILO Convention 98 of 1949* applies as a general guide.
12. It is therefore recognized that, in the court undertaking its specialized mandate, the Minister plays a major role. The CPMU is a department of the Minister, a repository of expertise on employment and labour relations and at the disposal of the court to assist as and when necessary. In recognition of the tripartite, Rule 37(1) of the *Court Rules* allow the court to among other things;  
  
37.
  - (1) In any economic dispute involving a collective agreement or any other issue where the Court considers it fit, the Court may order the Central Planning and Monitoring Unit to file a report within thirty days of service of the pleadings in any suit or such other time as the Court considers necessary.
13. The issue in dispute herein relates to CBA negotiations where parties do not agree on several clauses largely relating to general wage increments. This thus is an economic dispute and for the court to appreciate the same, the CPMU is at the disposal of the court to assist in this regard. This is recognized in several such economic disputes that the court has previously addressed.
14. In the case of *Union of National Research and Allied Institutes and Allied Staff of Kenya (UNRISK) v Bukura Agricultural College* (Employment and Labour Relations Cause 19 of 2021) [2023] KEELRC the court anchored the negotiations by the parties on the CPMU report to the court;

The CPMU report was a scientific expert report requested by the parties to assist the court in the determination of the two issues of basic wage increment and commuter allowance. The report indicated that the respondent was largely funded by the government and the claimant stated in its claim that, 'the respondent depended on the government funding for



its recurrent expenditure and had income generating programs from farm production. The CPMU report indicated that the said income generating programs were dependent on the exchequer. ...

15. The Court of Appeal appreciate the technical role of the CPMU in addressing an economic dispute, particularly in CBA negotiation in the case of *Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others* [2015] eKLR held that;

The AG on his part availed two witnesses. The first was Charles Nyariki Obuki, RW2 a senior Economist in the Ministry of Labour and Social Services who had worked at CPMU since 1997. He said that CPMU was established with the purpose of assisting the Industrial Court, as it then was, under the Ministry of Labour on policy review and research on the economic aspects of the dispute. Due to lack of capacity by the Judiciary following the establishment of the Employment and Labour Relations Court under the judiciary, CPMU has continued to offer its assistance to the said court. The second witness availed by the AG was Dr. Geoffrey Mwau, RW3 the Economic Secretary in charge of budget, Fiscal and Economic Affairs at the National Treasury. He is the advisor to the government on economic policy matters especially on budgetary processes.

16. The Supreme Court in the case of *Teachers Service Commission v Kenya National Union of Teachers & 3 others* [2015] eKLR was guided by the CPMU report in addressing the dispute concerning the CBA negotiations.
17. By having the CPMU address the economic issues at hand, the Department of the Minister can address the pros and cons and report to the court. It is appreciated that the CPMU will give a proper and scientific appreciation of all variables at play at the shop floor as held in the case of *Kenya Petroleum Oil Workers Union v National Oil Corporation of Kenya* [2021] eKLR that the CPMU report was able to address them and give an expert opinion on the Consumer Perception Index (CPI) because they had access to the respondent's financial records, indicate clearly that the respondent is financially unable to afford any salary increment due to its financial constraints. Also, the CPMU reports have all painted a dull picture of the Respondent's financial position.
18. It is to the benefit of both parties to secure this report and to the court for a just decision. It secures proper planning for the employer concerning its employees. The expertise obtained from the CPMU cannot be underestimated by the court in undertaking its mandate. See *Kenya Union of Commercial Food and Allied Workers v Bounty Limited* [2020] eKLR.
19. The court would like to refer to the provisions of *ILO Convention No. 98* and in particular, Article 4 thereof provides that;

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

20. Parties are still social partners and engaged from time to time in seeking solutions for employees and have previously negotiated CBA under review. The involvement of the CPMU will assist the parties and the court.

Given the matters aforesaid, I direct the parties to attend before the Minister and CPMU under the provisions of Rule 37(1) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 read together with Section 20(4) and (5) of the *Employment and*



Labour Relations Court Act, 2011. The CPMU will file a report with the court within 30 days from the date hereof. The parties are to avail all necessary information and records the CPMU requires to file its report to the court. As parties are engaged in negotiations, no orders on costs.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 20TH DAY OF JUNE 2024.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**

Court Assistant: Japhet

..... and .....

