



Bakery Confectionery Food Manufacturing & Allied Workers Union (K) v Brava Food Industries Limited (Cause E899 of 2022) [2024] KEELRC 2581 (KLR) (24 October 2024) (Judgment)

Neutral citation: [2024] KEELRC 2581 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E899 OF 2022
L NDOLO, J
OCTOBER 24, 2024**

BETWEEN

**BAKERY CONFECTIONERY FOOD MANUFACTURING & ALLIED
WORKERS UNION (K) CLAIMANT**

AND

BRAVA FOOD INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. The issue in dispute as stated by the Claimant in its Memorandum of Claim dated 22nd November 2022 is 'Refusal to Negotiate a Collective Agreement'.
2. The Claimant states that the parties executed a Recognition Agreement on 23rd June 2020, pursuant to a judgment delivered by Onyango J in ELRC Cause No 431 of 2019: Bakery Confectionery Food Manufacturing and Allied Workers Union (K) v Brava Food Industries Limited, on 20th May 2020.
3. The Claimant further states that upon execution of the Recognition Agreement, it forwarded Collective Bargaining Agreement (CBA) proposals to the Respondent, vide a letter dated 27th May 2021. The letter invited the Respondent for a meeting on 29th June 2021.
4. The Claimant avers that the Respondent requested for more time to consider the proposals, resulting to several deferments of the meeting. According to the Respondent, it could not fully participate in the CBA negotiations owing to the absence of a key director, occasioned by ill health.
5. The Claimant reported a dispute to the Minister for Labour, vide a letter dated 22nd October 2021 and a Conciliator was duly appointed. In his report dated 25th April 2022, the Conciliator recommended that the parties embark on the CBA negotiations. The Claimant accuses the Respondent of fronting unjustified reasons for its failure to participate in negotiations towards conclusion of a CBA.



6. The Claimant avers that the Respondent subsequently moved the Court on 27th April 2022, vide ELRC Miscellaneous Application No E060 of 2022, seeking injunctive orders to suspend the CBA negotiations, pending consideration of its application for revocation of the Recognition Agreement by the National Labour Board. The Claimant states that there are no orders staying the CBA negotiations.
7. The Claimant seeks the following remedies:
 - a. An order directing the Respondent to negotiate the proposals in respect of the CBA within 30 days;
 - b. In default, an order to issue that the Claimant's CBA proposals attached to the Memorandum of Claim as Appendix A, be afforded full merit and be adopted to take effect from 1st January 2021;
 - c. An order directing the Respondent to execute a formal CBA encompassing the said terms and in default, the same be deemed as duly executed and be registered accordingly by the Court;
 - d. An order directing the Respondent to fully cooperate with the Claimant in the negotiations, conclusion and implementation of subsequent and successive Collective Agreements;
 - e. An order of permanent injunction restraining the Respondent from victimising, intimidating, coercing, haranguing and/or terminating the employment of any of the Claimant's members on account of their participation in trade union activities.
8. In its Statement of Defence dated 4th May 2023, the Respondent states that the Claimant has fallen below the statutory requirement for recognition and there is therefore no lawful obligation on the part of the Respondent to enter into a CBA with the Claimant.
9. The Respondent adds that whereas upon execution of the Recognition Agreement on 23rd June 2020, the parties were to embark on negotiation of a CBA, it was discovered that the Claimant did not have membership of a majority of unionisable employees within the Respondent's workforce as required by Section 54 of the *Labour Relations Act*.
10. The Respondent maintains that it was under no obligation to engage the Claimant as it had lost the statutory simple majority. The Respondent asserts that the Claimant is obligated to continuously observe the statutory requirement of a simple majority and where this is not met, the employer is entitled to pursue de-recognition.
11. The Respondent claims to have followed a proper legal process to de-recognise the Claimant and adds that there is an active application before the National Labour Board.
12. The Respondent avers that at the time of delivery of the judgment in ELRC Cause No 431 of 2019: Bakery Confectionery Food Manufacturing and Allied Workers Union (K) v Brava Food Industries Limited, the Claimant had lost simple majority membership of unionisable employees of the Respondent's workforce, thus necessitating the Respondent to take the necessary steps to revoke the Recognition Agreement.
13. The Respondent states that its application dated 9th July 2020 remains pending before the National Labour Board. The Respondent admits having filed ELRC Miscellaneous Application No E060 of 2022: Brava Food Industries Limited v Bakery Confectionery Food Manufacturing & Allied Workers Union (K) and National Labour Board seeking injunctive relief against any engagement with the Claimant.



14. The Respondent further avers that at the time of filing the present suit, the Claimant did not have a single union member within the Respondent's workforce.
15. In its Reply to Defence dated 10th July 2023, the Claimant accuses the Respondent of victimising and terminating the employment of union members, through deliberate unlawful practices aimed at suppressing union activities.
16. The Claimant states that from the time of execution of the Recognition Agreement, the Respondent deliberately delayed and frustrated every attempt to negotiate a CBA, while actively victimising and coercing employees to resign from the Union. The Claimant further faults the Respondent for scuttling unionisation through disguised re-organisation and restructuring, resulting in cosmetic promotions of unionisable employees to management.
17. The Claimant reads mischief in the Respondent's application to the National Labour Board, which was not served on the Union whose de-recognition the Respondent seeks.
18. The dispute before me relates to negotiation and conclusion of a CBA pursuant to a Recognition Agreement between the parties. According to the record, the parties executed a Recognition Agreement on 23rd June 2020, following a judgment delivered by Onyango J on 20th May 2020.
19. Thereafter, the Claimant pursued negotiation of a CBA but the Respondent was not available, for various reasons ranging from need for more time, absence of a key director due to medical reasons to ongoing major construction at the Respondent's premises.
20. In the meantime, it would appear that the Respondent was relentlessly making effort to de-recognise the Claimant Union. Significantly, the Respondent lodged a revocation application before the National Labour Board on 9th July 2020, barely two weeks after execution of the Recognition Agreement. The Court observed that this was within the period when the Respondent kept postponing negotiation and conciliation meetings.
21. Further, the Claimant states that the Respondent did not notify it of its application to the National Labour Board, an averment that the Respondent does not deny.
22. I have had occasion to consider the grounds set out in the Respondent's application to the National Labour Board, and it appears that the Respondent is in effect seeking to set aside the judgment of the Court in ELRC Cause No 431 of 2019: Bakery Confectionery Food Manufacturing and Allied Workers Union (K) v Brava Food Industries Limited, by which the parties were directed to execute a Recognition Agreement and negotiate a CBA.
23. The only thing I will say on this issue is that the National Labour Board has no power to review decisions of this Court, meaning that the application and any proceedings before the Board are a nullity.
24. In yet another attempt to avoid negotiating the CBA, the Respondent filed ELRC Miscellaneous Application No E060 of 2022: Brava Food Industries Limited v Bakery Confectionery Food Manufacturing & Allied Workers Union (K) and National Labour Board seeking injunctive orders against negotiation of the CBA, on the basis of the application pending before the National Labour Board. This application was struck out by Ocharo J in a ruling delivered on 20th January 2023, where he stated the following:

“...by seeking to have the Agreement revoked by the Interested Party [National Labour Board], the Applicant is without expressly saying so, seeking to vary or quash the Judgment of the Court. The Interested Party is an entity subordinate to the Court and is in fact subject



to the supervisory powers of the Court. It cannot therefore have the powers to deal with the agreement in the manner sought by the Applicant.

If the Applicant was in any way aggrieved by the Recognition Agreement and its execution in the circumstances of the Judgment stated above, the proper forum for them was an application for review to the Court or an appeal against the Judgment.”

25. What emerges from the events leading to this dispute is an employer who has sought to stall a CBA negotiation at every stage. There is a valid judgment of the Court directing the parties to execute a Recognition Agreement and thereafter negotiate a CBA.
26. I therefore agree with the Claimant that the issue of simple majority, having been determined by a court of concurrent jurisdiction is *res judicata*. That said, the only pending issue is negotiation of the CBA. Section 57 of the *Labour Relations Act* provides as follows:
 57.
 - (1) An employer, group of employers or an employer’s organisation that has recognised a trade union in accordance with the provisions of this Part shall conclude a Collective Agreement with the recognised union setting out the terms and conditions of service for all unionisable employees covered by the recognition agreement.
 - (2) For the purpose of conducting negotiations under subsection (1), an employer shall disclose to a trade union all relevant information that will allow the trade union to effectively negotiate on behalf of employees.
27. In its submissions dated 17th April 2024, the Claimant cites the decision in *Commercial Food & Allied Workers Union (K) v London Distillers Limited [2020] eKLR* where it was held that negotiation of a CBA is a fundamental right of every trade union and its members.
28. As set out in the foregoing part of this judgment, the Respondent has persisted in unlawful acts aimed at defeating the order of the Court to negotiate a CBA; this not only amounts to an abuse of the court process but also borders on contempt of court. The said acts and their resultant ramifications are null and void.
29. In my interlocutory ruling delivered on 13th April 2023, I issued an injunction restraining the Respondent from engaging in any activity that may reasonably be construed as victimisation, harassment or coercion of any of the Claimant’s members, on account of their involvement and/or participation in trade union activities. Any such acts undertaken in the intervening period are therefore null and void.
30. Flowing from the findings above, I issue an order directing the parties to negotiate, conclude and present a duly executed CBA for registration by this Court within the next thirty (30) days from the date of this judgment.
31. The Claimant will have the costs of the case.
32. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF OCTOBER 2024

LINNET NDOLO

JUDGE

Appearance:



Mr. Amalemba for the Claimant

Mr. Aluku for the Respondent

