



**Kenya Union of Domestic, Hotels Educational Institutions and
Hospital Workers v Aga Khan Hospital Mombasa (Cause E061 of 2024)
[2024] KEELRC 13436 (KLR) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13436 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E061 OF 2024
M MBARŪ, J
DECEMBER 17, 2024**

BETWEEN
**KENYA UNION OF DOMESTIC, HOTELS EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS CLAIMANT**
AND
AGA KHAN HOSPITAL MOMBASA RESPONDENT

JUDGMENT

1. The issue in dispute is the respondent's alleged refusal to conclude pending clauses of the collective bargaining agreement (CBA).
The respondent recognises the claimant and has negotiated a CBA.
2. The claim is that the parties consented and presented a CBA with 7 clauses not agreed upon being:
 - a. Clause 21 on medical treatment;
 - b. Clause 23 on Gazetted public holidays;
 - c. Clause 38 on long service award;
 - d. Clause 39 on commuter allowance;
 - e. Clause 40 on on-call allowance;
 - f. Clause 29 on house allowance;
 - g. Clause 4 on leave travelling allowance.



- 3 Parties agreed to discuss these clauses progressively but the respondent has refused to reach a consensus. Several meetings have been held without agreement and the CBA for 2022/2023 is yet to be concluded and instead has introduced the 2024/2025 CBA.
- 4 The claimant reported the matter to the Minister and the respondent has remained non-committal.
- 5 The claimant is seeking that the respondent be directed to conclude negotiations and sign the pending CBA clause of 2022/2023 within 21 days and to meet the costs of this suit.
Zacchaeus Osore supports the claim.
- 6 In reply, the respondent admitted that the parties have negotiated a CBA. Parties have been unable to conclude the 2024/2026 CBA due to the actions of the claimant who has frustrated the conclusion. The respondent has been ready and willing to conclude the pending CBA but the claimant has refused to cooperate. There is no goodwill to conclude pending clauses. The intransigent stand adopted by the claimant has created an impasse.
7. Despite the respondent requesting proposals from the claimant for the 2024/2026 CBA, including negotiations for the pending clauses, the claimant rejected the request.
8. The response is that the claimant is using the court process to frustrate the conclusion of the CBA. The respondent seeks the court to declare and order the claimant to enter negotiations for the 2024/2026 CBA, which should include negotiations with pending clauses, and to dismiss the claim with costs. The court's intervention is crucial in this matter.
9. Parties attended court and agreed that this was an economic dispute and that they should file written submissions.
10. The claimant submitted that the issue in dispute is the conclusion of the CBA for the period 2022/2023. Seven clauses have yet to be concluded, and instead, the respondent is proposing negotiations on the 2024/2025 CBA. Despite being reported to the Minister for conciliation, the respondent has refused to conclude pending clauses.
11. The respondent submitted that the claimant is seeking the court to compel it to negotiate the 2022/2023 CBA within 21 days. The parties have been in negotiations but have been unsuccessful. The Conciliator issued a Certificate of unresolved dispute. The respondent deemed it reasonable to negotiate the 2024/2026 CBA, but the claimant has been adamant.
12. CBA negotiations are a continuous process, and parties should adopt a positive attitude. The respondent has proposed an all-inclusive CBA for 2024/2026, which is fair and reasonable and addresses the pending seven clauses. A positive attitude is key to successful negotiations.

Determination

13. The crux of this case lies in the differing priorities of the claimant and the respondent. The claimant is focused on concluding the 2022/2023 CBA, while the respondent is eager to address the 2024/2026 CBA.
14. Parties have been before a conciliator without the conclusion of the negotiations.



15. Whereas the *Employment Act* establishes the minimum standards of wages under Section 26(2), parties are allowed to negotiate a CBA and agree on enhanced terms and conditions of employment. Section 26(2) provides that;

Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee than the terms provided in this Part and Part VI. Such favourable terms and conditions of service shall apply.

16. Parties to a CBA are, therefore, allowed to agree on more favourable terms than the minimum terms and conditions of employment set out by the *Employment Act* and Wages Order. The court is also allowed to issue such favourable terms as held in the case of *Kenya Chemical and Allied Workers Union v Leather Life EPZ Limited* [2014] eKLR that;

The Wage Orders fix the wage floors. Collective Bargaining between Employers and the Workers? Representatives on wage increments aim to correct the cost of labour above the market benchmark, this benchmark being the minimum wage fixed under the wage orders. Traditionally, the Government has set the wage floor annually... In seeking to move beyond the benchmark regulated by the Government, Employers and Employees examine the compensable factors within the workplace and are guided by economic indicators. Whenever called upon to intervene in financial disputes, the Court is similarly guided by the relevant compensable factors and economic indicators.

17. The powers vested in the court to review terms and conditions of employment must be applied based on a rational application of the matters before it, as held in the case of *Kenya Tea Growers Association v Kenya Plantation & Agricultural Workers Union* [2018] KECA 706 (KLR). Each party must have proposals to allow counter-proposals upon which, based on the provisions of the law, the Wages Order, the court can have a basis and make a fair and just conclusion.
18. In this case, the claimant proposes seven clauses the respondent still needs to address. The intricate proposals on these clauses have yet to be discussed, save to urge the court that the subject CBA is 2022/2023.
19. The respondent, on its part, proposes negotiations for the 2024/2026 CBA.
20. The claim herein is for the conclusion of the CBA for 2022/2023. Where the respondent is keen to address the CBA for 2024/2026, proposals still need to be submitted.
21. Accordingly, parties shall address the CBA for the period 2022/2023 first. Taking into account the time spent on negotiations and the respondent's offer to proceed to the next phase of the CBA, 2024/2026, a time allocation of 30 days should suffice to conclude the pending clauses for the 2022/2023 CBA.
22. The claim is allowed to this extent. The parties are engaged in negotiations, and each is to bear its costs.
23. Mention after 30 days to record the conclusion of the CBA. Mention 20 January 2025.

DELIVERED IN OPEN COURT AT MOMBASA THIS 17 DAY OF DECEMBER 2024.

M. MBARŪ

JUDGE

In the presence of:



Court Assistant: Japhet

..... and

