



Kenya Quarry and Mine Workers Union v Mineral Enterprises Limited (Employment and Labour Relations Cause E891 of 2022) [2023] KEELRC 3366 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3366 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E891 OF 2022
BOM MANANI, J
DECEMBER 14, 2023**

**BETWEEN
KENYA QUARRY AND MINE WORKERS UNION CLAIMANT
AND
MINERAL ENTERPRISES LIMITED RESPONDENT**

RULING

1. The parties to this action have had a protracted dispute regarding the terms of the Collective Bargaining Agreement (CBA) that they have been negotiating since the year 2021. The dispute has seen them go through conciliation before they ended up in court.
2. Upon intervention by the court, the parties agreed on the contested clauses in the proposed CBA. However, they were unable to agree on the commencement date for the instrument. As such, they have asked the court to determine this aspect of the dispute.
3. On its part, the claimant Trade Union takes the view that since the proposed CBA was intended to replace the one that expired in December 2019, its effective date should fall in January 2021 when the parties allegedly opened negotiations on it. On the other hand, the Respondent argues that since negotiations on the draft CBA have just been concluded, its effective date should be the date on which it will be executed by the parties.
4. The parties have justified their contrasting positions on the subject on varying grounds. For the claimant, it is contended that the Respondent occasioned the delay in finalizing negotiations on the instrument by refusing to approve the draft that was shared with it in January 2021. Therefore, it (the respondent) should not be allowed to benefit from its deliberate frustration of the process. The Claimant argues that its members have lost immensely as a result of the delayed finalization of the new CBA.



5. On its part, the respondent argues that despite the advent of the Covid 19 pandemic which affected negotiations on the new CBA, it ensured that the claimant's members continued to benefit from the terms of the expired CBA. As a result, the claimant's members have not been disadvantaged as the claimant purports.
6. The respondent accuses the claimant for being substantially to blame for the delay in finalizing negotiations on the draft. According to the respondent, when the opportunity for negotiations became available following the slowing down of the pandemic, the claimant put unreasonable obstacles in the way thereby delaying conclusion of the exercise.

Analysis

7. The law that governs the coming into effect of CBAs is the *Labour Relations Act*, 2007. Section 59 (5) of the Act provides as follows:-

“ A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial Court and shall be effective from the date agreed upon by the parties.”
8. Under this provision, a new CBA gains force of law only after it has been registered. Until this happens, the instrument remains unenforceable.
9. The parties to the CBA are at liberty to agree on its effective date. Absent such agreement, it is presumed that this date shall fall on the day that the proposed CBA is registered.
10. In *Kenya Union of Commercial Food & Allied Workers v Kabuti Water & Sanitation Co. Limited* [2021] eKLR, the court concurred with this position when it stated as follows:-

“The law is specific on the effective dates of the CBA. This is the date of registration of the same.....This is the law and this court adopts the position for purposes of this dispute and CBA.”
11. In *Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 others* [2015] eKLR, Otieno Odek JA stated that contracts that are still undergoing negotiations only yield inchoate rights. He emphasized that such rights are not enforceable until they crystalize on execution of the contract.
12. The learned Judge emphasized that unless the parties are in agreement, a contract cannot be enforced retroactively in order to breathe life into inchoate rights which featured at the negotiations stage. He stated that the law generally frowns upon retrospective application of contractual rights except with the concurrence of the parties. I am persuaded by this view.
13. A CBA, just like any other contract, creates contractual rights between parties. These rights remain inchoate until the instrument is executed by the parties and registered by the court.
14. As such, the benefits that the instrument confers only crystalize upon its execution and registration. They can only be implemented prospectively from the date of the instrument's execution and registration unless the parties have agreed otherwise.
15. Therefore, absent consensus by the parties that the instrument should have retroactive application, the court cannot backdate it. To do otherwise will be tantamount to enforcing inchoate rights against the wishes of one of the parties to the instrument.



Determination

16. Absent agreement by the parties in the instant action on the effective date of the proposed CBA, that date shall be the date on which the instrument shall be executed and registered by the court.
17. Each party shall bear own costs.

DATED, SIGNED AND DELIVERED ON THE 14TH DAY OF DECEMBER, 2023

B. O. M. MANANI

JUDGE

