



**Kenya Engineering Workers Union v Farm Engineering Industries Ltd
(Cause 32 of 2019) [2022] KEELRC 14678 (KLR) (23 March 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14678 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 32 OF 2019
S RADIDO, J
MARCH 23, 2022**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
FARM ENGINEERING INDUSTRIES LTD RESPONDENT**

RULING

1. Before the court is a motion dated 11 June 2021, by the Kenya Engineering Workers Union seeking orders:
 - (1) That the Honourable Court deem fit and be pleased to issue an order against the Respondents Directors (Mr Gurpit Bhurji & Panvir Bhurji) and Managing Director (Mr Swarjit Singh Bhurji) directing the OCS Kondele Police Station to arrest and produce them before the Honourable Court for sentencing them to civil jail.
 - (2) That the forementioned Directors be compelled to sign the CBA before this Honourable Court.
 - (3) That the Respondent to meet the costs of this application.
 - (4) That any other relief the Honourable Court may deem fit to grant.
2. The grounds advanced in support of the Motion were that the Court had delivered judgment on 3 February 2021 directing the parties to sign a collective bargaining agreement within 30-days, the judgment and decree were served upon the Respondent and the County Labour Officer and that despite the service and invitations by the County Labour Officer, the Respondent had declined to comply with the decree.
3. The Respondent's Executive Chairman filed a replying affidavit on 16 September 2021, wherein it was deponed that the Respondent had not refused or declined to sign a collective bargaining agreement



with the Union within 30-days, but it is the County Labour Officer who had acted outside the 30-days; that the 30-days having lapsed, it would have been null and void to execute the collective bargaining agreement; that the Union had not involved the Respondent in drafting the collective bargaining agreement; that the Union had failed to supply a copy of the draft collective bargaining agreement; that there was a pending application for stay of execution of the judgment and that due to COVID-19 protocols, it was not possible to attend a physical meeting to sign the collective bargaining agreement.

4. The Respondent further asserted that the application was fatally defective because there was no competent contempt application before the Court.
5. The Union's submissions were not on record by the agreed timeline while the Respondent filed its submissions on 14 February 2022.
6. The Court has considered the application, affidavits and submissions.
7. It is not in dispute that in a judgment delivered on 3 February 2021, the Court directed the parties to execute a collective bargaining agreement within 30-days incorporating a general wage increase from 1 August 2017.
8. By the time the Court was delivering the judgment, the parties had already agreed on the terms of the collective bargaining agreement save for effective date and general wage increment.
9. The Respondent has attempted to explain why it has not signed the agreement.
10. The reasons such as the 30-days given by the Court had lapsed and that due to COVID-19 protocols, the parties could not meet are not genuine or bona fides. The reasons are equally not inspiring considering the utmost good faith is expected of social partners in industrial relations.
11. Both capital and labour must realise that they can only achieve their objectives and desires through a cooperative spirit. Capital won't get its profits without the workers' sweat, nor will the workers earn a livelihood without production.
12. The court will indulge the respondent for the last time and order:
 - i. The Union to submit a draft collective bargaining agreement to the respondent on or before 30 March 2022.
 - ii. The respondent to confirm the amendments comply with the court judgment on or before 8 April 2022.
 - iii. The parties to sign the collective bargaining agreement on or before 15 April 2022 before the County Labour Officer, Kisumu.
13. Costs in the cause.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 23RD DAY OF MARCH 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr. Makale, Industrial Relations Officer

For Respondent M.M. Gitonga Advocates LLP



Court Assistant Chrispo Aura

