



**Kenya Union of Commercial Food & Allied Workers v Eldomatt Supermarket Limited (Cause 15 of 2019) [2022] KEELRC 1776 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1776 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 15 OF 2019  
NJ ABUODHA, J  
JULY 29, 2022**

**BETWEEN  
KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS CLAIMANT  
AND  
ELDOMATT SUPERMARKET LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Through memorandum of claim filed on April 16, 2019, the claimant union alleged that they had a valid recognition agreement entered into on July 10, 2015 allowing them to represent employees in all negotiable matters concerning terms and conditions of service.
2. Pursuant to the recognition agreement, the claimant by a letter dated November 5, 2015 sent to the respondent a set of proposals to form basis of the negotiations on all issues forming the subject of the dispute.
3. According to the claimant, the respondent declined to respond to the proposals and request for a meeting forcing the claimant to report the existence of a trade dispute on March 14, 2017.
4. The Ministry appointed Mr B Musando to act as a conciliator between the parties. The conciliator organized for several conciliation meetings which the respondent never attended forcing the claimant to write a letter to the conciliator on September 21, 2018 asking him to issue a conciliation report and a certificate of an unresolved dispute.
5. The claimant further pleaded that following the appointment of the conciliator the respondent embarked on arbitrary termination of its members in the respondent's employment and forcing those remaining to withdraw their union membership.



6. The union therefore sought orders among others that the respondent do sign and present a collective bargaining agreement incorporating the agreed clauses for registration within seven days of the judgment of the court.
7. The union further sought costs of the suit.
8. The respondent filed a memorandum of response and counterclaim in which it pleaded among others that it opposed the recognition agreement from the onset, the same having been executed by an accountant who was not authorised by the company. In the light of the foregoing the alleged recognition agreement was void ab initio and unenforceable on the respondent.
9. The respondent further stated that at the time the claimant brought up the issue of the CBA they did not have the requisite majority as provided under section 54 of the *Labour Relations Act* and the respondent was therefore not obliged to sign any CBA though they maintained that there was no recognition in the first instance.
10. The respondent admitted that at some point there were discussions on recognition but the same collapsed when the claimant could not meet the threshold of 50% plus one of the respondent's employees as stipulated under section 54 of the *Labour Relations Act*.
11. The respondent denied engaging in any unfair labour practice by terminating members of the union or forcing them to withdraw from the union as alleged. According to the respondent, the termination was as a result of redundancy which the claimant was aware of and both parties consented to the same in ELRC at Nakuru cause No 375 of 2017 and the affected employees paid their terminal dues.
12. The respondent further stated that it had 136 employees out of which only 34 were members of the claimant union.
13. According to the respondent, the claimant was aware that they had a minority of the respondent's employees but instead of respecting the position, they have been harassing the respondent and its employees in pursuit of recruiting more members.
14. The respondent therefore in counterclaim prayed that the claimant be restrained from acting in a manner likely to affect the respondent's business.
15. This being an economic dispute the court referred the matter to CPU for their analysis and report.
16. The CPMU in their report dated September 28, 2021 dealt with the issues contained in the draft CBA put forward by the claimant union and which has been disputed by the respondent on the grounds that there was no valid recognition agreement between the claimant union and themselves. The purported recognition agreement according to the respondent was signed by unauthorized officer of the company and that the same could not be signed, since claimant's union failed to meet the requisite majority contemplated under section 54 of the *Labour Relations Act*.
17. Under section 54 of the *Labour Relations Act* an employer is bound to recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.
18. The section uses the mandatory "shall" which implies that once it is ascertained that a union has attained the requisite simple majority the employer does not have room for maneuver, it must recognize the union for the purposes of collective bargaining.
19. The disputed recognition agreement was signed on July 10, 2015 between the claimant and a Mr N Patel who indicated that he was a director of the company on one hand and Mr Boniface M Karuri the



Secretary General for the claimant union on the other hand. This suit was commenced on April 16, 2019. Prior to its commencement, there were several conciliation attempts by the Ministry of Labour which collapsed due to failure or omission on the part of the respondent to attend any of the meetings called by the conciliator.

20. The respondent at no given time raised the issue of the lack capacity of Mr N Patel to bind the respondent by signing the recognition agreement. Besides, the said Mr N Patel though described by the respondent as an accountant, represented to the claimant that he was a director hence capable of binding the respondent.
21. Section 54(5) gives an employer the right to apply to the National Labour Board to terminate or revoke a recognition agreement. The respondent though disowning the recognition agreement has to date not shown any evidence that they have exercised or attempted to exercise their right under section 54(5) of *Labour Relations Act*. They therefore cannot be heard to deny that they have a binding recognition agreement.
22. From the report of the CPMU produced to the court, it is noted that the respondent as at 2020 did not have any unionsiable employees. This, the report attributes the decrease in the number of staff occasion by the effects of Covid – 19 and competition from other stores, wholesalers and retail shops.
23. Therefore whereas there is in existence a valid recognition agreement which has not been terminated under section 54(5) of the *Labour Relations Act*, the court, in keeping in mind the right to unionise recognised under article 41 of the *Constitution* and also bearing in mind the need for good industrial relations hereby orders the respondent to allow the claimant union to access its premises upon reasonable notice and hours convenient to the respondent for purposes of recruiting more members of the union to make for the shortfall in membership. The parties shall once the requisite majority is met reopen discussions around the draft CBA with the guidance of the CPMU report dated September 28, 2021.
24. The court further directs that in the event of a dispute over access to the respondent’s premises for purposes of recruitment of new members or any dispute in connection with recognition agreement or CBA the same be submitted for resolution using the mechanisms contained under part VIII of the *Labour Relations Act* and in default a reference to the court.
25. Each party shall bear their own costs of the suit.
26. It is so ordered

**\*\*DATED AT ELDORET THIS 29<sup>TH</sup> DAY OF JULY, 2021 DELIVERED THIS 29<sup>TH</sup> DAY OF JULY, 2022**

**ABUODHA JORUM NELSON**

**JUDGE**

