



**Kenya Union of Commercial, Food and Allied Workers v Olivado (EPZ) Limited  
(Cause 182 of 2017) [2022] KEELRC 13173 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13173 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI**

**CAUSE 182 OF 2017**

**DKN MARETE, J**

**OCTOBER 31, 2022**

**BETWEEN**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**OLIVADO (EPZ) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a memorandum of claim dated May 3, 2017. The issue in dispute is thereby cited as;
 

Refusal to negotiate Collective Bargaining Agreement (2016-2018)
2. The respondent in a memorandum of response dated June 12, 2017 denies the claim and prays that the same be dismissed with costs.
3. The claimant’s opener case is that they have a mutual relationship through a valid recognition agreement signed on July 18, 2016.
4. The claimant’s further case is that section 57 (i) of the *Labour Relations Act*, 2007 enjoins both parties to engage and conclude a collective bargaining agreement covering the employees of the respondent.
5. On this premises, the claimant union submitted its proposal on a CBA to the respondent on July 27, 2016. On August 23, 2016 the respondent, instead of submitting its counter proposals filed what it called “CBA determination of Union membership in respect of the simple majority required for Collective Bargaining.” She went on to call for termination and or revoking of the recognition agreement.
6. It is the claimant union’s further case that the issue of 50 + 1 % requirement pursuant to section 54 (i) of the *Labour Relations Act*, 2007 had been disposed of as at the time of signing the recognition



agreement on the August 23, 2016. To raise the same issue again was, in bad faith and a violation of the very ground upon which the recognition agreement was executed.

7. The matter was referred for conciliation but failed as the parties insisted on their respective positions.

She prays as follows;

- a. The respondent to recognize the claimant Union as the properly constituted and representative body and the sole labour organisation representing the interest at the work place of all unionisable employees at the respondent establishment.
- b. The respondent to commit to negotiating in good faith a collective bargaining agreement and put the collective bargaining in place ready for registration within 30 days from the date of judgment.
- c. The respondent be condemned to pay costs arising from the claim.
- d. Any other or further orders the honourable court deems just in the interest of Justice to issue.

8. The respondent's case is that she appreciates the right of its workers to join a trade union. This fact together with a representation which was made by the claimant to the respondent's Chief Executive Officer and Chief of Operations to the effect that the respondent was bound to recognize it as long as any of the respondent's employees had joined the union, led the respondent to sign the recognition agreement.

9. Her further case is that by a letter dated July 27, 2016, the claimant forwarded its Collective Bargaining Agreement (CBA) proposals to the respondent. She received collective bargaining agreement proposal on July 22, 2016 where upon she sought legal advice on the matters. Following receipt of legal advice, by letters dated August 23<sup>rd</sup> and September 2, 2016, the respondent informed the claimant that it was not in a position to participate in the negotiations for a CBA for the following reasons:-

- a. The claimant did not represent a simple majority of the respondent's unionisable employees; and
- b. Some of the workers who had joined the union were not eligible to join by virtue of the provisions of the Industrial Relations Charter; the workers whose eligibility was in issue were outlined as well as the reasons therefore

10. The respondent other case is a denial that it has refused to negotiate a CBA with the claimant and avers that the twin issues of eligibility and capacity of the union ought to be determined first. She implores this court to exercise its inherent power to do justice as well as the power donated to it by section 12(3) of the *Employment and Labour Relations Court Act, 2007* to stay these proceedings pending determination of the respondent's application to the National Labour Board.

11. Further, the respondent avers that the right of recognition rests on the strength of the collective bargaining unit and that the validity of a recognition agreement is subject to the continued presence of a simple majority of unionisable employees.

12. This matter being an economic dispute was subjected to an investigation and analysis by the Central Monitoring and Planning Unit who tendered a report dated February 25, 2019 to this court.

The issues for determination therefore are;

1. Whether the parties should be ordered to partake the CBA negotiations to agreement and finality.



2. Whether the claimant is entitled to the relief sought.
3. Who bears the costs of this cause.
13. The 1<sup>st</sup> issue for determination is whether the parties should be ordered to partake the CBA negotiations to agreement and finality. The claimant in her written submissions dated May 30, 2019 fronts a case of recognition of the claimant as the rightful representative of the respondent workers and that parties move on to negotiate and agree on the CBA within agreed timelines.
14. The respondent opposes the claim and submits that the claimant does not have the legal basis to sustain a case for a CBA with herself. This is the grounds that the claimant no longer has the requisite numbers for such action inter partes. It is her case that the claimant does not possess a simple majority of 50% +1 in her establishment and therefore is not qualified to undertake CBA negotiations with herself.
15. The claimant's case is that there is a subsisting recognition agreement inter partes. The big question that arises herein is whether a valid recognition agreement subsists to date. The claimant acknowledges this whereas the respondent disputes the same.
16. In the circumstances, the onus is on the respondent to tender evidence in support of a case for no subsisting recognition agreement. In the absence of this, she is bound to walk the negotiation process with the claimant to conclusion.
17. There is no evidence of this scenario by the respondent. She is therefore bound to negotiate the CBA with the claimant to fruition. The parties should therefore be compelled to negotiate their CBA to agreement and finality.
18. It would appear that the eloquent defence of the respondent is only escapist. It is lacking in evidential integrity and value. It is therefore not sustainable.
19. The 2<sup>nd</sup> issue for determination is whether the claimant is entitled to the relief sought. She is. This is resultant and from the finding on the 1<sup>st</sup> issue for determination.
20. I am therefore inclined to allow the claim and award the relief as follows;
  - i. The respondent be and is hereby estopped from living a lie and recognise the claimant as the legitimate representative of the unionisable employees of her establishment.
  - ii. The respondent be and is hereby ordered to enter into negotiations on a CBA as proposed by the claimant.
  - iii. That these negotiations be guided and based by the CPMU Report dated February 25, 2019.
  - iv. That the negotiations and conclusion of the CBA be had within 60 days of these orders of court.
  - v. That the cost of this cause shall be borne by the respondent.

**DATED AND DELIVERED AT NYERI THIS 31<sup>ST</sup> DAY OF OCTOBER 2022.**

**D K NJAGI MARETE**

**JUDGE**

Appearances

1. Miss Macharia for the claimant union.
2. Mr Babu instructed by Anne Babu & Co Advocates for the respondent.

