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## DOES AN EMPLOYER'S INTENTION TO TERMINATE A RECOGNITION AGREEMENT AFFECT THE VALIDITY OF AN EXISTING COLLECTIVE BARGAINING AGREEMENT?

London Distillers (K) Limited v Kenya Union of Commercial Food & Allied Workers [2025] KECA 216 (KLR)

### 1. Background

1.1. The Kenya Union of Commercial Food & Allied Workers, ("the Union") filed a claim before the Employment and Labour Relations Court against London Distillers (K) Limited, the Appellant, ("the Employer), challenging the redundancy of ten (10) employees and unlawful retirement of five (5) employees.

1.2. The Union contended that it had a valid Recognition Agreement with the Employer under which parties had negotiated several Collective Bargaining Agreements (CBA). The most recent CBA became effective on **1 May 2015** for a period of two years and, in accordance with the Labour Relations Act.

1.3. The Union contended that on 19th June 2017 the Appellant notified the Respondent of its intention to terminate the parties' Recognition Agreement. On 22nd June 2017 the appellant actualized its threat by approaching the National Labour Board for revocation of the Recognition Agreement. However, the matter was yet to be determined.

1.4. On 12th August 2020, the Employer displayed a notice within its factory informing employees that the COVID-19 pandemic had drastically affected the company operations, resulting in low sales and that plans were underway to reorganize operations. The notice further stated that certain positions would become redundant and that employees who had attained the retirement age, including those aged 58 years and above, would no longer be required.

1.5. The Union became aware of the notice on 17th August 2020 after it was brought to its attention by union members. The Union reached out to the Employer and proposed a meeting on 20th August 2020 and another one on 26th August 2020 to discuss the issues raised in the notice. However, the Employer turned away the Respondent on both occasions.

1.6. On 30th August 2020, ten (10) employees received letters dated 28th August 2020 terminating their employment on account of redundancy, and a further five employees received retirement letters. The Union argued that these actions violated clauses 6, 22 and 23 of the

CBA and section 40 of the Employment Act, 2007.

1.7. The Union further contended that the fifteen (15) employees were given only three (3) days' notice to quit employment. The Union also alleged that on 22nd January 2020, the Employer ceased deducting and remitting Union dues without any lawful justification.

1.8. In addition, the Union contended that under the Collective Bargaining Agreement, early retirement could only be initiated voluntarily by an employee. It argued that the Employer could not unilaterally retire employees under the guise of organizational restructuring. The Union further maintained that the notice dated **12 August 2020** did not constitute a valid statutory notice for either retirement or redundancy and therefore did not satisfy the requirements of the Employment Act, 2007.

1.9. The Employer, on the other hand, contended that it had complied with the notice requirements under section 40 of the Employment Act, 2007. The Employer further argued that having withdrawn recognition of the Union, it was no longer bound by the Recognition Agreement or the Collective Bargaining Agreement and was therefore under no obligation to involve the Union in matters relating to the affected employees. The Employer also maintained that section 40 of the Employment Act does not require an employer to consult or engage a trade union after issuing a redundancy notice.

1.10. The Employment and Labour Relations Court held that both the redundancies and retirements amounted to unfair termination of employment. The Court found that the Recognition Agreement and the Collective Bargaining Agreement remained valid and binding, having been duly executed by the parties and registered with the Court, and had not been lawfully terminated.

1.11. The Court further found that the Employer had failed to comply with both the Collective Bargaining Agreement and the Employment Act, 2007. In particular, the Employer failed to pay the notice pay, severance pay and retirement benefits prescribed under the Collective Bargaining Agreement, produce evidence demonstrating that the terminal dues had been correctly computed and paid, demonstrate the criteria used in selecting employees for redundancy and comply with the contractual and statutory procedures governing redundancy and retirement.

1.12. Consequently, the Court declared the redundancies and retirements unlawful and awarded the affected employees the remedies provided under the Collective Bargaining Agreement and section 40 of the Employment Act, 2007.

1.13. Aggrieved by the decision, the Employer appealed to the Court of Appeal.

## 2. Court of Appeal's Determination

2.1. On appeal, one of the issues before the Court of Appeal was whether the Collective Bargaining Agreement between the Employer and the Union remained valid and binding.

2.2. The Employer contended that it no longer recognised the Union or the CBA and, consequently, had no obligation to issue the Union with the notice dated 12 August 2020. It further argued that the CBA had been constructively vitiated by the Union through its continuous neglect and violations. In addition, it submitted that the issue of termination of the Recognition Agreement was pending before the National Labour Board for hearing and determination.

2.3. The Union, on the other hand, maintained that it had a valid Recognition Agreement pursuant to which the parties had negotiated several CBAs. It submitted that the last CBA, which became effective on 1 May 2015 for a period of two years, remained in force pending its review.

2.4. The Court noted that the trial court had considered the validity of the CBA and found that, although the Employer had alleged that it had been vitiated by the Union's conduct, it had neither particularised the alleged violations nor adduced any evidence in support of those allegations.

2.5. The Court agreed with the trial court that a CBA is a document provided for by law and cannot be constructively vitiated. It further agreed that, once registered, the terms of a CBA become incorporated into the contracts of employment of the employees covered by it. Accordingly, the Employer's letter dated 22nd June 2017, expressing its intention to terminate the Recognition Agreement, had no effect on the validity of the CBA.

2.6. The Court further referred to section 59 of the Labour Relations Act, which sets out the requirements and effect of a valid CBA. The Court noted that a CBA must be in writing, signed by the Chief Executive Officer of the employer and the General Secretary of the trade union that is a party to the CBA, and becomes enforceable upon registration by the Employment and Labour Relations Court from the date agreed upon by the parties. The Employer did not dispute that the CBA had been duly signed by the requisite signatories or that it had been registered. Its case was simply that the CBA had been vitiated by the Union through neglect and violations.

2.7. Relying on section 107 of the Evidence Act, the Court held that the burden of proving that the CBA had been vitiated rested on the Employer. Having reviewed the record, the Court found that no evidence had been adduced to support the Employer's allegations. The only evidence before the Court was the Employer's letter to the National Labour Board dated **June 2017** seeking termination of the Recognition Agreement, a process that remained incomplete when the claim was filed.

2.8. The Court therefore held that the CBA remained valid and binding on the parties.

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