



Kenya Engineering Workers Union v M/s Pronto Energy Limited (Cause 785 of 2019) [2024] KEELRC 1258 (KLR) (10 May 2024) (Judgment)

Neutral citation: [2024] KEELRC 1258 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 785 OF 2019
NJ ABUODHA, J
MAY 10, 2024**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
M/S PRONTO ENERGY LIMITED RESPONDENT**

JUDGMENT

1. By a memorandum of claim filed on 21st November, 2019, the claimant averred in the main that;-
 - a. That the Claimant in the month of September 2019 did recruit 176 employees of the Respondent in her membership out of a possible unionisable workforce of 250 which is about 68%. Here attached and marked Appendix 2 are Check-Off Forms and Gazette Notice.
 - b. That, on the 3rd October, 2019 after the check off forms had been forwarded the Claimant did forward a copy of the Model Recognition Agreement for counter signing but the Respondent did decline. Here attached and marked Appendix 3 is a Recognition Agreement and a forwarding letter.
 - c. That following the Respondent's actions the Claimant did invoke Section 62 of the [Labour Relations Act, 2007](#), by reporting trade disputes to the Labour Ministry. Here attached and marked Appendix 4 are letters to that effect.
 - d. That in fear of the behavior by the Respondent herein of which she started to victimize the Claimant members of which she unfairly terminated the 78 employees on account of joining the union and threatening the remaining ones, prompted the Claimant to forward this matter to this Honourable Court under Section 74 of the [Labour Relations Act, 2007](#).
2. The Claimant consequently prayed for orders that:



- a) That the Honourable Court deem fit to Order the Respondent herein to comply with Section 48 of the *Labour Relations Act*, 2007 by way of deducting and remitting union dues monthly with immediate effect.
 - b) That the respondents be ordered to pay 2% of the claimants' members' gross salaries from the month of October, 2019 to date from their own pockets.
 - c) That the Honourable Court to issue Orders against the Respondent from victimizing the Claimant members on ground of Trade Union activities/affiliation by way of lookout, redundancy, termination, dismissal and or change of their current contracts.
 - d) That the parties be ordered to sign Recognition Agreement within a specified shortest time possible to pave way for CBA negotiations.
3. The respondent filed a response on 3rd February, 2020 and averred among others that:
- i. On 28th November 2019, the Claimant caused to be served upon the Respondent's Company Secretary, one Mr. Nicholas Kokita, and the pleadings herein as filed by the Union alleging refusal to inter alia grant the Claimant Recognition.
 - ii. The Respondent's management upon perusal of the Court documents saw for the very first time letters purportedly addressed to them enclosing a recognition agreement and check-off forms as well as correspondences to a conciliation.
 - iii. The Respondent categorically states that they were never served with the Recognition Agreement, check-off forms on purported conciliation documents for their further action prior to the 28th of November 2019.
 - iv. The Respondent is therefore a stranger to allegations at Part 2 of the Claimant's Memorandum and the Claimant is called to very strict proof thereof.
 - v. Respondent denies that it is in breach of the Law more particularly Article 41 of the *Constitution* and Sections 48 and 54 of the *Labour Relations Act*, 2007 and the Claimant is called to very strict proof of the contrary.
 - vi. The Respondent avers that it has a total unionisable workforce of 727 and as the Claimant avers that they have recruited 168 members they have not met the legal threshold warranting Recognition and are therefore misguided in their claim.
 - vii. The Respondent having had no knowledge of the check-off forms cannot be said to be in breach of any Law as the Claimant intentionally failed to bring the same to the notice of the Respondent's management.
 - viii. The Respondent denies that it has victimized its staff and or issued any threats as alleged at paragraph 2.4 of the Memorandum of Claim and the Claimant is called to very strict proof thereof.
4. The parties agreed to dispose of the suit by way of written submission. The claimant on its part submitted in the main that the respondent should continue to deduct union dues as per the ruling of the Court and that the respondent never sought a stay of the Court ruling on the matter hence to raise the issue of service of the check off forms was baseless. The claimant further submitted that section 46 of the *Employment Act* prohibits dismissal on account of union activities or union membership or participating in union activities. In this regard the claimant relied on the case of *Kenya Engineering Workers Union vs. Alpha Logistics (EPZ) Limited* Cause 14 of 2020.



5. On the issue of whether the claimant had met the threshold for recognition, the claimant submitted that the respondent's transport, gas filling, accounts workshop and gas cylinder fabrications were purely engineering hence that claimant sought their representation. Further that the respondent produced the number of unionisable employees in the entire company regardless of the nature of their work forcing the claimant to recruit in other departments as per the additional check off forms filed in Court.
6. The claimant further submitted that the allegation of two unions seeking recognition was unfounded as the claimant targeted gas fabrication department which fell within its sector of representation as per the registered constitution and that Kenya Petroleum Oil Workers Union should stick to their sector and that the union only came into existence in 2022 while the claimant had been there since 2019.
7. The respondent on its part submitted inter alia that the claimant's check off forms purporting to show it recruited 178 unionisable employees in the respondent's employment was never received by it. They did not bear any proof that they were received. Further that at the point of filing the suit, the claimant was far short of the simple majority. The claimant had only 178 alleged employees of the respondent yet the respondent had 727 unionisable employees. The claimant's act of filing a second batch of check off forms in February, 2020 containing a further list of 161 employees after the respondent had filed its memorandum of response was full of mischief and casts doubt as to the authenticity of the names in the check off forms. Counsel for the Respondent further submitted that the Court should disregard the 1st batch of check off forms since the same were never served on the respondent. In this respect the respondent relied on the case of *Kenya Private Universities Workers Union vs Management University of Africa* [2021] eKLR.
8. Counsel for the respondent submitted that there was a new development in the matter in that Wambui Maina, the Legal Officer of the respondent deposed in her affidavit sworn on 30th November, 2023 that as at August 2023, the respondent's employees who were claimant's members stood at 40 in number. She also exhibited a ruling and order in Cause E133 of 2022 *Kenya Petroleum Workers Union vs. Proto Energy Limited* which was pending before the Court. This perhaps explained the acute drop in number of the claimant's members. In delivering its ruling and orders on 7th July, 2023 in Cause E133 above, the Judge made a finding that Kenya Petroleum Workers Union had recruited a simple majority of the respondent's unionisable employees and ordered respondent to enter into a recognition agreement with that union. In the light of this ruling, Counsel submitted that the suit before the Court had been overtaken by events.
9. It would seem that there is common ground that there is rivalry between the claimant and KPOWU over which union should represent unionisable workers in the respondent's employment. Whereas the claimant claims it was first in time, having entered into a recognition agreement in 2019, KPOW came in 2022. However, with the coming of KPOW, the claimant experienced a significant drop in the number of unionisable employees it had recruited. From 178 to a mere 40 out of a workforce of 727 unionisable employees while KPOW had some 722 members. Further the Court in the matter between the respondent and KPOW ordered the respondent to enter into a recognition agreement with KPOW. The claimant has acknowledged this fact but argued that it will restrict its membership to gas cylinder fabrication department which falls within its sector of representation as per the registered constitution.
10. As was held by Radido J in the case of *Kenya Union of Commercial Food & Allied Workers Union vs. Attorney General & Another; Central Organization of Trade Unions (Interested Party)* [2020] eKLR.

“One of the principal objectives for the establishment of this Court was to further secure and maintain good employment and labour relations in the country...The question, therefore,



begs whether lowering the simple majority threshold and allowing multiple unions in the workplace would serve the need for industrial harmony in the workplace...The statutory principle of simple majority is not without purpose. It facilitates the orderly conduct of collective bargaining within the industry. It reduces the risk of the proliferation of trade unions in the workplace. It enhances industrial peace...Allowing multiple Unions to be recognised by an employer would be a recipe for chaos.”

11. I cannot agree more. Recognition is a transient process and requires regular recruitment of unionisable employees to retain the minimum threshold stipulated under section 54 of the *Labour Relations Act*. Where a rival union has outmarched the existing union by recruiting more members and in tandem with the provisions of section 54 of the *Labour Relations Act*, it becomes the reigning union and will be recognized for purposes of collective bargaining. Further it would be impractical to have multiple unions recognized by a single employer unless it can be clearly demonstrated that such employer is involved in distinct activities that create conspicuously identifiable cadre of employees that cannot be effectively represented by one union. The respondent deals mainly in Petroleum and gas and fabrication of gas cylinders for packaging is a collateral business and does not require a distinct union representation. The interests of the workers in this department can be adequately addressed by the KPOW who already have a recognition agreement with the respondent.
12. To the above extent, the fact that KPOWU had already secured recognition status and the respondent ordered by the Court to commence deduction of Union dues, it would be impractical to order the respondent to deduct union dues in respect of the claimant yet as it were they have lost the minimum threshold for recognition.
13. In conclusion this suit has been overtaken by events and the orders sought incapable of being granted. The suit is therefore dismissed but with no order as to costs.
14. It is so ordered.

DATED AND DELIVERED THIS 10TH DAY OF MAY, 2024

ABUODHA NELSON JORUM

JUDGE

