



**Kenya Engineering Workers Union v Multi Tools Limited (Cause
1264 of 2018) [2024] KEELRC 1395 (KLR) (11 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1395 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1264 OF 2018
NZIOKI WA MAKAU, J
JUNE 11, 2024**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
MULTI TOOLS LIMITED RESPONDENT**

JUDGMENT

1. The Claimant Union filed this claim against the Respondent for its refusal to accord the Union recognition agreement and to comply with section 48 of the *Labour Relations Act*, 2007 by way of deduction and remittance of union dues and for its victimization of the Claimant Union members. The Claimant's case is that the Respondent's business falls within the area of representation of the Union as per the Union's duly registered constitution. That the Union first recruited the Respondent's employees in 2016 but the Respondent refused to deduct and remit union dues despite having been served with the duly signed original check-off forms. That also in the same year, 2016, the Respondent declined to sign a recognition agreement and prompted the Union to report a trade dispute to the Minister of Labour and a Conciliator was subsequently appointed. According to the Claimant, the Respondent started victimizing her members on account of trade union activities through termination of employment after the trade dispute was reported. That the Conciliator invited parties for two conciliation meetings but the Respondent declined to attend, prompting the Conciliator to issue a Certificate of Disagreement. The Claimant thus prays:
 - a. That , the Respondent be ordered to comply with the mandatory provisions of the Law being section 48 of the *Labour Relations Act*, 2007 by way of deducting and remittance of union dues.
 - b. That , the Honourable Court be pleased to order the Respondent to accord the Claimant Recognition Agreement by signing the same with specific time frame to pave way for CBA negotiations.



- c. That , the Respondent be ordered to pay 2% of the Claimant’s members gross salaries for the month of September 2016 for the first ‘8’ employees and June 2017 for the last ‘5’ employees from her own pocket.
 - d. That , the Honourable Court to issue Orders against the Respondent from victimizing the Claimant members on ground of Trade Union activities/affiliation.
 - e. That , any other relief the Honourable Court may deem fit to grant.
 - f. That , the cost of this suit be met by the Respondent to the Claimant.
2. In reply, the Respondent filed a Response to Memorandum of Claim wherein it denied that its business falls within the jurisdiction of representation of the Claimant Union. That whereas Rule 3(a) of the Claimant’s constitution states that the union’s membership is open to all unionisable employees engaged in the General Mechanical Engineering and Metal Allied Manufacturing Industries, the Respondent is licensed to carry on the business of wholesale trade of hardware and machinery and of storage thereof. It argued that its employees are therefore not eligible for membership of the Claimant Trade Union as per the definition of “unionisable employee” under section 2 of the [Labour Relations Act](#), 2007. Further, the Respondent averred that it is a stranger to any trade dispute referred to the Minister of Labour involving the parties herein. It denied that it victimized any of its employees or terminated their employment as alleged by the Claimant and asserted that the Claimant has not met the threshold of a recognition agreement so far as the same relates the Union and the Respondent’s employees. The Respondent further denied this Court’s jurisdiction and prays that the Claimant’s Claim be dismissed with costs.
 3. The matter proceeded by way of written submissions.

Claimant’s Submissions

4. According to the Claimant, the issues for determination by this Court are:
 - a. Whether the Honourable Court lacks jurisdiction to hear and determine this matter.
 - b. Whether it is mandatory to invoke section 62 of the [Labour Relations Act](#), 2007.
 - c. Whether the Claimant Union is the relevant or Sector Union to represent the Respondent employees.
 - d. Whether the prayers sought by the Claimant in her Memorandum of Claim should be granted or not.
5. The Claimant submitted that this Court has jurisdiction to hear and determine the matter as provided under section 12 of the [ELRC Act](#), 2016. That the issue of invoking section 62 of the [Labour Relations Act](#), 2007 on reporting of a trade dispute to the Labour Ministry is not mandatory considering the use of the word ‘may’ and not ‘shall’. That this position was affirmed in Kisumu ELRC Cause No. 18 of 2017, [Kenya Engineering Workers Union v Jokali Handling Services and another](#) and in Civil Appeal No. 100 of 2013, [Karen Blixen Camp Limited v Kenya Hotels and Allied Workers Union](#). That she nevertheless reported a trade dispute and a Certificate of Unresolved Dispute issued to that effect.
6. On whether she is the relevant/sector union, the Claimant submitted that she is the most relevant/sector union as the Respondent is licensed for medium workshop or service and repair contractor while the Claimant Union has recruited employees that are tradesmen engineers, mostly from the workshop. The Claimant Union referred this Court to the Respondent’s Business Permit No. 1077042 of activity code No. 825 as contained at page 4 of the Respondent’s List of Documents. She further submitted



that the Constitution of Kenya is supreme to both Statutes and any organization's constitution, pursuant to the freedom of association guaranteed under Article 36 and the right to form or join a trade union of one's choice under Article 41. It was the Claimant's submission that she had met the threshold for a grant of a recognition agreement since her membership stands at 59%, there is no rival union at the Respondent Company and she is the most relevant/sector union.

7. As regards union dues, the Claimant submitted that the use of the word 'shall' in section 48 of the Labour Relations Act, 2007 is in mandatory terms and having forwarded duly signed check off forms for 13 employees together with a gazette notice, the prayer for deduction and remittance of union dues should be granted with immediate effect. The Claimant further submitted that the Respondent should also be made to meet the cost of this suit for causing unnecessary litigation and for further withholding union dues. In support of her prayer 2, the Claimant urged the Court to be persuaded by the decision of the Court in Kenya Engineers Workers Union v Crom Impex (K) Limited [2024] eKLR. The Claimant prays that her Memorandum of Claim be allowed and Orders granted as prayed.

Respondent's Submissions

8. The Respondent submitted the following as the issues for determination by this Court:
 - a. Whether the Claimant is the appropriate sector union as provided in section 54(8) of the Labour Relations Act.
 - b. Whether the Claimant Union has *locus standi*.
 - c. Whether the Claimant has exhausted the available mechanism for resolution.
9. On the first issue, the Respondent submitted that even though employees have a constitutional right to join membership of a union of their choice, the trade unions are required to specify the scope of their membership in their constitution. That to effect, a trade union is restricted to recruit membership only from the sector in which its constitution limits it and employees are therefore required to be eligible for membership of that trade union in order to be recognised as unionisable employees. The Respondent noted that in this case, Rule 3(a) of the Claimant Union's constitution outlines requirement for membership as follows: Membership of the Union shall be open to all unionisable employees engaged in the General Mechanical Engineering and Metal Allied Manufacturing Industries. That further based on the nature of the Respondent's business of wholesale trade of hardware and machinery and storage thereof, it is evident that the Respondent's employees are not eligible for membership at the Claimant Union.
10. It was the Respondent's submission that having found that the Claimant has not reached the recognition threshold as far as the Respondent's employees are concerned, it lacks the *locus standi* to institute this suit on behalf of the said employees. It argued that Courts have held that although both Article 41 of the Constitution and section 4(1) of the Labour Relations Act recognize the right of every worker to join a union of their choice, the right can only be exercised in so far the union's constitution provides the scope of membership. That since its employees are not unionisable employees under the Claimant Union, the said Union could not raise a trade dispute on their behalf. The Respondent further submitted that it is only after the eligibility test is satisfied that the majority test becomes relevant and having proven that its employees were not unionisable employees under the Claimant, this Court should find that the majority test is dead on arrival. That in any event, the Claimant had not tendered any evidence supporting the allegation that she had recruited 19 out of 22 employees, which assertion thus remains to be a mere allegation.



11. The Respondent further submitted that section 107 of the *Evidence Act* provides that a party who alleges a fact must prove it. That the Court should consider that the Claimant Union did not produce any witness or sworn witness statements from the said employees to confirm that they were indeed members of the Union. It argued that even if there was a valid claim, the employees have a right to file suits in their own right. In this regard, the Respondent relied on the case of *Kenya Engineers Workers Union v Africa Metal Works Limited* (ELRC Cause 61 of 2018) [2024] KEELRC 859 (KLR) (16 April 2024) (Judgment).
12. It was the Respondent's submission that if this Court is however inclined to agree with the Claimant, it should be noted that the jurisdiction of this Court has been prematurely invoked because the Claimant did not follow the procedural requirement under section 62 of the *Labour Relations Act*, to exhaust all possible options for redress. It maintained that it is a stranger to any dispute the Claimant alleges she referred to the Ministry of Labour.
13. The Claimant union is engaged in general mechanical engineering and metal allied manufacturing industries. The Respondent is in the business of wholesale trade of hardware and machinery. The purposes and intents for the Union are not the same as the operations of the Respondent. As such, the Claimant is not the appropriate Union for the employees of the Respondent. It therefore engaged on a frolic in 'recruiting' employees of the Respondent. It had no business in the sector as it is not the Union for the sector. This suit was an abuse of the court process. Consequently, this suit is a non-starter since no conceivable trade dispute can exist between the Claimant and the Respondent. The suit is dismissed with costs to the Respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JUNE 2024

NZIOKI WA MAKAU

JUDGE

