



**Kenya Engineering Workers Union v Metal Masters Engineering Limited
(Cause 773 of 2019) [2024] KEELRC 2046 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2046 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 773 OF 2019
B ONGAYA, J
JULY 26, 2024**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
METAL MASTERS ENGINEERING LIMITED RESPONDENT**

JUDGMENT

1. The claimant filed the memorandum of claim dated 14.11.2019 through its General Secretary, Wycliffe A. Nyamwata seeking the following prayers:
 - i. 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.
 - ii. That, the respondent be ordered to pay 2% of the claimant's members' gross salaries for the month of August 2019 from their own pockets.
 - iii. That, the Honourable Court to issue orders against the respondents from victimizing the claimant's members on ground of trade union activities or affiliation by way of lock-out, redundancy, termination, dismissal and or change of their implied permanent contracts to fixed contracts.
 - iv. That, any claimant's member victimized by way of trade union affiliation or activities, redundancy or lock-out be reinstated without loss of any benefits and or be paid all their redundancy benefits plus 12 months' salary as compensation for each of them.
 - v. That, the respondent provide for costs.
 - vi. That, any other relief the Honourable Court may deem fit to grant.



2. The claimant's case is that it is a duly registered trade union in the Engineering Sector and the Respondent's business follows the jurisdiction area of the Union's representation.
3. The claimant averred that it recruited 14 out of a possible 18 unionisable employees of the respondent in July 2019 but the respondent declined to deduct and remit union dues despite having forwarded duly signed original check-off forms. That the union also forwarded the Model Recognition Agreement for perusal by the respondent before signing of the same but the respondent declined to sign it.
4. It was the claimant's averment that after the respondent was served with form "S", the Company introduced contract forms for members to sign before entering their place of work and when they resisted, they were all locked out. The Union asserted that the respondent's action was akin to victimization of its members as the said contracts were not in line with the law and that the lock-out of its members without any proper reason was in breach of Article 41 of the Constitution of Kenya.
5. The Claimant further averred that it was prompted to report the trade disputes to the Labour Ministry following the respondent's intentions of refusal to deduct and remit union dues and declining to sign the recognition agreement. It pleaded that it has met all the three requirements for recognition as stipulated under section 54 of the Labour Relations Act, 2007 being that:
 - a. There is no rival union at the Respondent Company.
 - b. It has recruited 78% of the unionisable employees of the respondent, which is over and above the mandatory of 51% simple majority.
 - c. It is the most relevant union as per the claimant's registered constitution.
6. The respondent's statement of defence is dated 27.10.2023 and was filed through Njenga Sang & Company Advocates. The respondent denied that the Claimant recruited employees from the Company or that it received any check-off forms of the alleged employees. It further refuted having been served with any model agreement from the claimant union and asserted that it has not in any way engaged in unfair labour practices as alleged.
7. The respondent stated that the claimant's actions are premature and that the claimant is thus not entitled to the reliefs as sought in its memorandum of claim. It prays that the claimant's suit be dismissed with costs to the respondent.
8. The parties relied on pleadings and documents on record. Each filed the respective submissions as directed by the Court. The Court has considered the material on record and returns as follows:
 - a. The record shows that the claimant reported a trade dispute per section 62 of the Labour Relations Act, 2007 by the letter dated 05.10.2019. The stated issue in dispute was refusal of the respondent to sign recognition agreement. The conciliator appears not to have been appointed by the time the suit was filed on 15.11.2019. To that extent, the Court returns that the suit appears to have been premature for want of conclusion of the statutory conciliation procedure.
 - b. The record further shows that the claimant has not exhibited the duly signed form S that is alleged to have been served upon the respondent. The Court returns that on a balance of probability the respondent's case that its employees had not been recruited at all is upheld.
 - c. In view of the foregoing findings the suit must collapse as the reliefs prayed for are found unjustified. There is no dispute that the claimant is the sector union and in furtherance of future harmonious relationships between the parties, each to bear own costs of the suit.



In conclusion, judgment is entered for the respondent for dismissal of the suit and each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 26TH JULY 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

