



Kenya Building, Construction, Timber and Furniture Industries Employees Union v Slumberland Kenya Limited (Cause E573 of 2022) [2024] KEELRC 2030 (KLR) (25 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 2030 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E573 OF 2022**

**L NDOLO, J
JULY 25, 2024**

BETWEEN

**KENYA BUILDING, CONSTRUCTION, TIMBER AND FURNITURE
INDUSTRIES EMPLOYEES UNION CLAIMANT**

AND

SLUMBERLAND KENYA LIMITED RESPONDENT

JUDGMENT

1. By its Memorandum of Claim as filed in court, the Claimant seeks the following remedies:
 - a. An order directing the Respondent to furnish to the Court tabulated dues for 74 of its employees;
 - b. An order directing the Respondent to pay to the 74 employees their terminal dues.
2. In spite of due service, the Respondent did not file a response to the claim. The matter therefore proceeded *ex parte* with the Claimant calling Benjamin Kimanathi as its sole witness. The Claimant also filed written submissions.

The Claimant's Case

3. The Claimant states that it has a Recognition Agreement with the Respondent upon which several Collective Bargaining Agreements have been negotiated.
4. The Claimant further states that on 5th August 2022, one of the Respondent's Directors Jay Mediratta told 74 employees to leave the company premises and seek employment elsewhere as the company was closing down.
5. The Claimant adds that the employees, who had not received their salary for the month of July 2022, gathered and staged a peaceful sit-in, prompting the Respondent to call for police intervention from



Industrial Area Police Station. The employees were subsequently paid their outstanding salary and were thereafter instructed to leave the Respondent's premises.

6. The Claimant claims that the Respondent's Directors had planned to leave the country before paying the employees their terminal dues.

Findings and Determination

7. The Claimant filed a tabulation of the respective claims by the employees dated 30th January 2023. The tabulation lists sixteen (16) permanent employees and nine (9) casual employees. This is at variance with the Claimant's pleading as contained in the Memorandum of Claim, which identifies 74 employees.

8. It is a general principle of law that parties are bound by their pleadings. In its decision in *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others* [2017] eKLR the Supreme Court of Kenya held that:

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to state all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings...”

9. This principle was rehashed by Mrima J. in *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR in the following terms:

“It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* [2014] eKLR which cited with approval the decision of the Supreme Court of Nigeria in *Adetoun Oladeji (NIG) v Nigeria Breweries PLC SC 91/2002* where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

“..it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded...In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”

10. In this case, the Claimant came to court on behalf of 74 unnamed employees but adduced evidence on account of 16 persons referred to as permanent employees and 9 referred to as casual employees.



Moreover, the authority to act dated 17th February 2023 was signed by 12 persons. These were substantive variances leading to uncertainty as to the actual case presented by the Claimant.

11. In the result, I find and hold that the Claimant failed to prove its claim which therefore fails and is dismissed with no order for costs.

12. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY JULY 2024

LINNET NDOLO

JUDGE

Appearance:

Ms. Chege for the Claimant

No appearance for the Respondent

