



**Kenya Concrete, Structural, Ceramic Tiles, Wood Plys and Interior Design
Workers Union v China State Construction & Engineering Corporation Limited
(Cause E056 of 2022) [2025] KEELRC 182 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 182 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E056 OF 2022
J RIKA, J
JANUARY 31, 2025**

BETWEEN
**KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOOD PLYS AND
INTERIOR DESIGN WORKERS UNION CLAIMANT**
AND
**CHINA STATE CONSTRUCTION & ENGINEERING CORPORATION
LIMITED RESPONDENT**

JUDGMENT

1. The Claimant Union, initiated the proceedings herein, through a Statement of Claim, dated 1st February 2022.
2. Judgment is sought against the Respondent for: -
 - a. The Respondent is compelled to comply with Sections 48 and 54 of the Labour Relations Court.
 - b. The Respondent is directed to sign a formal Recognition Agreement with the Claimant, and commence CBA negotiations with the Claimant, within 30 days from the date of signing the Recognition Agreement.
 - c. The Respondent is directed to desist from intimidating and forcing members of the Claimant to withdraw their membership.
 - d. Any other suitable orders.
 - e. Costs.



3. The Claimant simultaneously filed an application under certificate of urgency, dated 1st February 2022, asking the Court to compel the Respondent to deduct and remit trade union dues, and to desist from harassing or intimidating the Claimant's members, on account of their membership.
4. The application was un-opposed and the orders were given as prayed on 22nd June 2022, and the Claim, which was undefended, to proceed for formal proof on 12th October 2022.
5. On 12th October 2022, both Parties were represented. Mr. Amule for the Respondent sought to defer the hearing, submitting that the Respondent had not received the pleadings. He told the Court that the Respondent had only received mention notice, and interim orders. He also submitted that the Claimant had filed another Claim involving similar issues, E&LRC Cause Number 247 of 2022.
6. The Court made the following orders: -
 - a. The Claim is undefended and was fixed for hearing, upon the Court being satisfied on service.
 - b. Mr. Amule is not properly on record.
 - c. There is no formal application from the Respondent, asking the Court to set aside the order for formal proof hearing.
 - d. There is similarly no evidence placed before the Court, of the existence of Cause Number 247 of 2022, or evidence that the Claims are similar.
 - e. Hearing to proceed on formal proof, as scheduled at 10.00 a.m.
7. At 10.00 a.m. General Secretary Dishon Ashioya opted to prosecute the Claim, by way of his oral submissions.
8. He relied on his affidavit sworn on 1st February 2022. He exhibited check-off forms relating to recruited Employees of the Respondent. He exhibited a gazette notice, containing a ministerial order, authorizing deduction of trade union dues, in favour of the Claimant. He submitted that the Claimant had recruited 294 Employees, out of a unionisable workforce, of 300 Employees. The Employees worked in Lokichar, Turkana County.
9. Upon recruitment of Employees, the Respondent went of termination spree, discontinuing Employees who had chosen to belong to the Claimant. Employee went on a strike. The dispute was reported to the Ministry of Labour, and return-to-work formula, crafted and executed by the Parties.
10. It was agreed that the Respondent would deduct and remit trade union dues. No Employee would be victimized on account of their industrial action or association with the Claimant. The Claimant urges the Court to confirm the interim orders, and grant the substantive orders.
11. The Claim came up for mention on 22nd November 2022, when the Claimant confirmed filing and service of its closing submissions. The Respondent informed the Court that it had filed an application to set aside ex parte proceedings, and that the Court should hear that application first, before retiring to make its final orders.
12. The Court acceded to the request by the Respondent, and directed that its application be disposed of by way of written submissions. The Court directed further on 28th February 2023, that the file is returned to the Registry, and the Parties to supply physical copies of the application filed by the Respondent, with properly marked pleadings and documents, to enable the Court make appropriate orders. The Claim was scheduled for mention on 2nd April 2024, when the Court did not convene. The



Claim was last mentioned before Hon. Justice C. Baari, on 7th October 2024, who directed that the file is forwarded to the Trial Judge, undersigned, for preparation of Judgment and/or any other orders.

The Court Finds : -

13. The application filed by the Respondent seeking to set aside ex parte proceedings, is supported by the affidavit of Mr. Amule, sworn on 11th October 2022. He restated that the Respondent was not served with the primary pleadings.
14. The application is opposed through the affidavit of Mr. Angoya, sworn on 21st November 2022. He states that the Respondent was served with the application and the primary pleadings, through its last known e-mail address, chinastatelokicharhr1@gmail.com. The Respondent does not deny that this is the correct e-mail address.
15. There is nothing in the application filed by the Respondent to reopen hearing, to discount the affidavit of service on record, or the replying affidavit filed by Mr. Angoya.
16. There is no affidavit filed by a principal officer of the Respondent, disputing that the e-mail used in service of the pleadings, was the wrong address. It is doubtful that Mr. Amule can speak to service of the primary pleadings, having not been the recipient of those pleadings.
17. Cause Number E247 of 2022, is between the Parties, as submitted by the Respondent, but is not about the same issues placed before the Court in this Claim. Cause E247 of 2022, involves unfair termination of 7 Employees. The dispute was subject of conciliation proceedings different from the conciliation proceedings that resulted in return-to-work formula. There was recommendation by the Conciliator, pursuant to which Cause E247 OF 2022, was filed, that the 7 Employees be reinstated. The other Cause does not address Recognition, CBA and trade union dues.
18. The Court confirmed on scheduling the Claim for formal proof, that service of the summons and the primary pleadings, was in order. There is nothing to persuade the Court to shift from that position. The application by the Respondent seeking reopening of the hearing is declined.
19. The substantive orders sought in the Claim, were subject of a settlement agreement between the Parties, crafted and executed at the Ministry of Labour, on 8th December 2021. The agreement involved a return-to-wok formula, after the Respondent's Employees at Lokichar, Turkana County, were involved in an industrial action.
20. The agreement was executed by: -
 - I. Mr. Amule, Advocate for the Respondent.
 - II. Mr. Pong Yi, Respondent's Project Manager.
 - III. Mr. Raphael Ayimba, Respondent's Human Resource Manager.
 - IV. Mr. Xu Heng Li, Respondent's Human Reource Assistant.
 - V. Mr. Angoya, Claimant's General Secretary.
 - VI. Mr. Lowos Emer, Chairman Workers Committee.
 - VII. Elipan Ekai, Chief Shop Steward.
 - VIII. Mark Emase, Deputy Chief Shop Steward.
 - IX. Witnessed by - Grace Mweresa the Conciliator and Albert Sakwa, County Labour Officer.



21. All Parties were well-represented at this forum. The agreement involved tripartite partners, and their authorized representatives.
22. Among the resolutions, was that trade union dues be deducted and remitted by the Respondent, and the Respondent to engaged workers and their representatives in resolving grievances. There were other wide-ranging resolutions, such as the establishment of a sexual harassment policy; payment of salaries on schedule; and compensation of injured workers.
23. The Court does not see why the settlement agreement, negotiated and concluded by top representatives of the Parties to this dispute, with the assistance of Counsel and the Labour Office, should not have aided in the resolution of the dispute herein. The issues dealt with through the settlement agreement, echoed the issues in dispute in this Claim. The dispute was needlessly escalated to the Court.
24. The Parties and their representatives do not seem to have honoured Section 3[3] of the E&LRC Act, Cap 234B, The Laws of Kenya which requires that:

“ The parties and their representatives, as the case may be, shall assist the Court to further the principal objectives...”
25. The principal objectives include expeditious, efficient and proportionate resolution of disputes. The Claim herein should not have gone beyond the year 2022, with the assistance of the Parties to the Court.
26. The Claimant seeks deduction and remittance of trade union dues, in terms of Section 48 of the *Labour Relations Act*. There is a gazette notice authorizing deduction and remittance of trade union dues. An order restraining the Respondent from victimizing Employees on account of their association with the Claimant is sought. The settlement agreement made adequate provision for this, enabling the Employees to return to work. The Court made similar orders protecting the Employees from victimization, pending the outcome of the Claim.
27. The prayers relating to Recognition and negotiation and execution of the CBA, are well-founded. The settlement agreement involved negotiations of some matters that are ordinarily handled through the collective bargaining structures. It was agreed that the Respondent would engage the Employees, through their shop floor representatives. Matters such as sexual harassment, salaries and work injury compensation were discussed between the Claimant Union and the Respondent, in what was a tripartite forum. Parties have already been engaged in collective bargaining subjects. The Respondent would not have engaged the Claimant in negotiating and executing a return-to-work agreement, if there was any doubt, on the capacity of the Claimant Union, to discharge the role of the sole collective bargaining agency, with respect to representation of the Respondent’s unionisable Employees. An order for Recognition and execution of CBA, would merely formalize what is already existing informally, at the workplace. It would assist the Parties in formally engaging in social dialogue, and prevent further industrial disruptions.
28. The Claimant has exhibited check-off forms showing recruitment of 294 unionisable Employees, out of a total of 300 eligible Employees. The Respondent has not supplied its muster roll, or other records, disputing the correctness of the figures supplied by the Claimant Union.
29. No other trade union has emerged, from the vast woodwork that has become of the Kenyan trade union movement, claiming the right of representation of the same Employees. The relevance of the Claimant Union to represent the Respondent’s Employees has not been disputed. It was never disputed in crafting the return-to-work formula.



It is ordered: -

- a. The Respondent's application seeking to reopen hearing of the Claim is declined.
- b. The Claim is allowed as follows-
 - I. The Respondent shall deduct and remit trade union dues to the Claimant, in accordance with Section 48 of the *Labour Relations Act*.
 - II. The Respondent shall forthwith sign a Recognition Agreement with the Claimant.
 - III. Parties shall thereafter negotiate, execute and register a CBA, within 90 days of signing Recognition Agreement.
 - IV. The Respondent shall not victimize any of its Employees, on account of their association with the Claimant.
- c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025.

JAMES RIKA

JUDGE

