



Kenya Union of Commercial Food and Allied Workers v Turner Bakers & Hatfield (1968) Ltd (Cause E003 of 2023) [2025] KEELRC 204 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 204 (KLR)

FORMERLY ELDORET CAUSE NO. 16 OF 2020

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE

CAUSE E003 OF 2023

MA ONYANGO, J

JANUARY 30, 2025

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

TURNER BAKERS & HATFIELD (1968) LTD RESPONDENT

JUDGMENT

1. Judgment in this suit was delivered on 18th October, 2021 by my Brother Nelson Abuodha J wherein he decided at paragraph 7 thereof as follows:

Considering that there has been some considerable time since the alleged recruitment took place and the submission of the draft recognition agreement the Court will order that the Claimant resubmits to the Respondent for verification and confirmation the list of members recruited and the draft recognition agreement for signature once the list of members is verified and confirmed by the Respondent.

The matter is set for mention thirty days from the date of delivery of this judgment for recording of final orders. That is to say on 29th November, 2021 for recording of final orders.

2. On 22nd February, 2022 the Judge referred the parties to the County Labour Officer for conciliation in line with paragraph 7 of the judgment. The judge specifically directed that the County Labour Officer assists the parties to review and reconfirm the list of members recruited who were still in the Respondent's employment and if the same meets the simple majority rule, assist the parties to sign recognition agreement for purposes of collective bargaining.



3. The report of the County Labour Officer was not filed in court until 30th October, 2023. The report is dated 26th October, 2023.
4. The report is reproduced here below:

Ministry Of Labour & Social Protection State Department Of Labour & Skills Development

Trans-nzoia County

County Labour Officer

Kitale

Ref No: NLSP/KTL/Court Order 2022

The Deputy Registrar

Employment and Labour Relations Court

Eldoret

Re: Elrcc Cause No.16 Of 2022 Court Order

I refer to the above court matter, between the Kenya Union and Allied Workers (KUCFAW) and Turner Barker Hatfield (1968) Ltd.

In respect to this matter, parties were engaged and both submitted list of nine (9) names for verification and confirmation as stated below:-

List of names submitted by the claimant (union):-

- 1) John Wanyama,
- 2). Barnaba Kurgat M.
- 3). Jonah Wasike
- 4). Madgelyn Wanjala
- 5). Simiyu Wayongo
- 6) Paul Barasa
- 7). Ben Wanjala
- 8). Wilberforce Nyongesa
- 9). Felix Bolo

List of employees names in the payroll as submitted by respondent (Employer):-

- 1) Barnaba Kurgat Mugubi,
- 2). Everline Khakasa Wanjala
- 3). Macdonald Munyasa Wanjala,
- 4). Sharon Nafula Simiyu
- 5). David Wanjala



- 6). Laila Rajani
- 7). Jonah Wafula Wasike
- 8). Wilberforce Nyongesa
- 9) Paul Barasa Wakwabubi

Observations

-Both parties submitted a list of names each.-There are only four (4) similar names appearing in both lists, that is, Barnaba Kurgat M., Paul Barasa, Jonah Wasike and Wilberforce Nyongeza.-The other names were totally mismatched.

Conclusion

From the above observations and through my verification of the list, I would conclude that only four (4) out of nine (9) employees are members of the claimant (union).

Signed

Elisha R. Tiktik

County Labour Officer

Trans-nzoia County

5. The parties were thereafter directed to file their submissions in respect of the County Labour Officer's report. The Claimant filed submissions dated 15th May, 2024. The Respondent's submissions are dated 5th April, 2024.
6. The Claimant submitted that the rights of the Respondents' employees to freedom of Association and the right to join a Trade Union is guaranteed under Articles 36 and 41 of the Constitution of Kenya. That these rights are domesticated under the Labour Relations Act, 2007. That the domestic standards find strong endorsement in the International Labour Organisation (ILO) Conventions Nos. 87 and 98 on Freedom of Association and the Right to Bargain Collectively.
7. The Claimant submitted that section 54 of The Labour Relations Act, 2007 is clear on the issue of recognition where the trade union has attained a simple majority of the unionisable employees.
8. The Claimant submitted that the report presented by the Labour Officer shows that the Claimant has recruited 4 employees out of a possible 7 employees from the Respondent's list since David Wanjala is no longer employed by the Respondent and Laila Rajani is not an employee but a Director/Manager and thus does not fall amongst the unionisable employees.
9. That since recruitment of members is a continuous process, the Claimant recruited one more employee (Macdonald Munyasa) and the check off form was served upon the Respondent *vide* a letter dated 9th August, 2022.
10. The Claimant submitted that it had therefore attained a simple majority by recruiting 5 out of a possible 7 unionisable employees translating to 71% of the Respondent's employees.
11. It was further the Claimant's submission that Article 41 of the Constitution, guarantees the right to join and participate in the activities of such union. That harassment or victimization of an employee on account of their union membership is a direct violation of Article 41. That the right to associate and join a union of one's choice is an inviolable right that cannot be taken away.



12. That since recruitment is a continuous process, the Claimant is still in the process of recruiting more of the Respondents' employees to its membership.
13. The Respondent on its part submitted that it is not true that on 16th to 27th October 2018, the Claimant recruited employees of the Respondent as required for purposes of recognition.
14. The Respondent further submitted that the Claimant has never forwarded to the Respondent a draft recognition agreement for purposes of signing a recognition agreement.
15. The submitted that it is alive to the fact that it is the constitutional right of its employees to join a trade union and the Responded has never denied them that right hence the Claimants' allegations are not true.
16. The Respondent further submitted that it is not true that the it had embarked on victimization of union members and that key members who assisted in recruitment of members had been terminated for highlighting the members grievances. That for instance, Mr. Koros requested for retirement as is evident from document no. 1 of the Respondent's bundle of documents being a copy of the letter from Mr. Koros dated 18th August 2017 requesting for retirement.
17. On the part of Mr. Stanley's Simiyu, the Respondent submitted that he broke into the Respondent's director's bedroom and when he was found he ran away and never came back since then. The Respondent referred to document 4 being copy of the letter dated 17th March 2017 addressed to the Claimant on the incident.
18. It was submitted that the terminal dues for Mr. Korros were handed over to him and that Mr. Stanley Simiyu's dues were also paid to him despite him absconding duty and running away. That the Claimant's officer from Kitale office witnessed the same.
19. The Respondent submitted that it was aware that the right to join a trade union is a right guaranteed by the Constitution and it cannot be taken away as long the laid down procedure is followed. It submitted that in the instant case the Claimant did not follow due procedure thus it cannot claim that the Respondent denied its employees the said right.
20. From the report of the County Labour Officer it is apparent that the names of the employees as stated in the check off forms differ from the names as recorded in the payroll submitted to the County Labour Officer by the Respondent. Neither the Claimant nor the Respondent clarified this apparent variance to court or matched the names in the two lists.
21. From the report of the County Labour officer, I find that the Claimant has not proved that it attained a simple majority to qualify for mandatory recognition by the Respondent.
22. The Claim is therefore not proved and is dismissed. Each party shall bear its costs.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 30TH DAY OF JANUARY, 2025.

M. ONYANGO

JUDGE

