



REPUBLIC OF KENYA



**Kenya Chemical Workers Union v Agri Seeds (K) Ltd (Cause E040 of 2022) [2025] KEELRC 127 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 127 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E040 OF 2022  
MA ONYANGO, J  
JANUARY 23, 2025**

**BETWEEN**

**KENYA CHEMICAL WORKERS UNION ..... CLAIMANT**

**AND**

**AGRI SEEDS (K) LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the *Labour Relations Act* and is mandated in its constitution to represent employees in the sectors set out in the membership clause of its constitution.
2. The Respondent is a limited liability company registered as such in Kenya.
3. It is the Claimant union's position that by virtue of its constitution the employees of the Respondent fall within the purview of its membership and it is the right union to represent the employees of the Respondent in labour matters.
4. Vide a memorandum of Claim dated 24<sup>th</sup> January, 2022 as amended by the Amended Memorandum of Claim dated 8<sup>th</sup> February, 2022, the Claimant states that between July and October, 2021, it recruited a total of 55 out of 69 unionisable employees of the Respondent. That this translated to 80% of the unionisable employees of the Respondent.
5. The Claimant union states that on 21<sup>st</sup> October, 2021 it wrote to the Respondent enclosing a signed copy of the model/standard Recognition Agreement requesting the Respondent to sign the same.
6. The Claimant states that it also enclosed the check off forms signed by the employees together with the Minister's Order No. 7316 of 1<sup>st</sup> July, 2011 authorizing deduction of union dues from the salaries of employees who had signed the check off forms and remittance of the same to the Claimant union's authorized account as stated in the order.



7. It is the Claimant's case that on 3<sup>rd</sup> November, 2021 the Respondent locked out the Claimant's members and a meeting was held between the Claimant and representatives of the Respondent on the same day and a return to work formula reached.
8. The Claimant states that in the circumstances, it has attained the simple majority threshold and is therefore qualified for recognition but the Respondent has resorted to victimization, a practice that is bad in law.
9. The Claimant union states that it is only fair and just that the court issues orders to protect the right of workers to join a trade union under Article 41 of the Constitution of Kenya and section 4 of the Labour Relations Act.
10. The Claimant prays for the following reliefs:
  - a. It is the Claimant's humble prayer to the Honourable Court that the Respondent be ordered to retain the services of the Claimant members.
  - b. That, the Honourable court to order the Respondent to effect deduction of trade union dues and continue to do so within the law.
  - c. That, the Honourable court to order the Respondent to sign Recognition Agreement with the Claimant and commence negotiating the CBA within 30 days for the date of the judgment.
  - d. That, all the employees whose names appear in the check off system forms but were forced to join staffing Africa Ltd be reinstated back to Seedco (k) Limited.
  - e. That, all employees whose services were transferred to any outsourced company be reinstated back to Respondent services unconditionally.
  - f. That the Honourable Court do issue any other order it deems fit to address the cause of justice.
  - g. That, the cost of this application be provided for in favour of the Claimant/Applicant.
11. Both the Claim and Amended Claim were filed together with a motion seeking similar orders as in the Claims.
12. The Respondent filed Replying Affidavit of Wellington Wasike, its General Manager sworn on 25<sup>th</sup> April, 2022 and a Memorandum of Reply dated 27<sup>th</sup> May, 2022 in which the Respondent states that it has 3 different types of employees being pensionable, contract and temporary employees.
13. The Respondent states that the Claimant started a recruitment drive targeting the Respondent's temporary employees and was able to get some to sign the check off forms signifying their willingness to join union membership.
14. The Respondent admits that on 21<sup>st</sup> October, 2021 the Claimant wrote a letter to the Respondent seeking recognition and forwarded a copy of Recognition Agreement.
15. The Respondent states that while it was still considering the Recognition Agreement from the Claimant, Seedco Group Limited, the Group Company, sent a Memorandum on 13<sup>th</sup> January, 2022 to the Respondent communicating the decision of the Group Company that all categories of employees be outsourced to align with other business units.
16. That the memorandum was a follow up on an earlier Memorandum sent by the Group Company to all its subsidiaries on 1<sup>st</sup> April, 2021 communicating the business decision to outsource the function of temporary workers to third parties.



17. That following the issuance of the Memorandum on 13th January 2022, the Respondent held a meeting with the staff informing them that the Company would be undergoing a restructuring following the adoption of a new business strategy by the Group Company whereby they would be partnering with third party organizations to manage all non-regular or temporary staff otherwise classified as category three employees.
18. The Respondent states that it further informed the affected employees that in Kenya, the Respondent had settled on Staffing Africa Limited as the outsourcing company and that there would be a voluntary transition of affected staff from the Respondent to Staffing Africa Limited.
19. The Respondent states that in line with the decision of the Group Company on the restructuring and the outsourcing of the temporary labour force, the Respondent laid off the category three employees. Copies of the staff clearance forms signed by the employees are annexed at Annexure D at pages 6-110 of the Respondent's Bundle of Documents.
20. The affected employees were paid their terminal dues upon their exit from the Respondent. Copies of documents evidencing payment of the terminal dues are at Annexure E at pages 111-122 of the Respondent's Bundle of Documents.
21. The Respondent states that affected employees who were interested in transiting from the Respondent to Staffing Africa Limited made their applications to Staffing Africa Limited and were thereafter engaged by Staffing Africa Limited.
22. The Respondent avers that employees whom the Claimant seeks to represent in this suit are no longer employees of the Respondent. That the Claimant has no locus to bring this suit against the Respondent there being no relationship between them as the Recognition Agreement was never signed.
23. It is the Respondent's position that it cannot be compelled to sign the Recognition Agreement with the Claimant since the staff concerned are no longer employees of the Respondent.
24. Further, that the Respondent cannot be compelled to implement the deduction of union dues from the 55 employees as they are no longer employees of the Respondent.
25. It is the Respondent's averment that it cannot be restrained from transferring the 55 employees to Staffing Africa Limited since the decision to transfer was voluntary and made upon the application of the affected employees. That a majority of the affected employees willingly applied for employment with Staffing Africa Limited and have already been engaged by Staffing Africa Limited.
26. In a rejoinder vide an affidavit sworn on 30<sup>th</sup> May, 2022 by Peter Ouko Onyango, the Claimant states that it is not true that the Respondent has 3 categories of workers. That all the Respondent's workers are permanent. That the Claimant recruited permanent staff and not temporary staff as alleged by the Respondent.
27. The Claimant states that it is not true that the Respondent had any plans to outsource staff. The same was only resorted to by the Respondent after the Claimant recruited its employees and after the return to work formula following the lockout of employees who joined union membership.
28. The Claimant states that the averment of restructuring as alleged in paragraph 7 of the Respondent's reply is not true. That at the meeting between the parties held on 3<sup>rd</sup> November, 2021 Mr. Kasim Owino informed the meeting that the Respondent would not allow the union to get a foothold in the company as this would cause it losses. That the company would use all means to stop the union.



29. Mr. Onyango states that the Respondent used police officers from Athi River Police Station to disperse workers and there was no lay-off as alleged at paragraph 9 of the Memorandum of Reply. That in the process, 7 employees were arrested and locked up. It took the intervention of COTU(K) Secretary General to get the arrested employees released.
30. The Claimant states that employees were not paid terminal benefits upon exit as alleged by the Respondent. That only a few were persuaded to accept the terminal benefits.
31. The suit was disposed off by way of written submissions. The Claimant filed its submissions dated 17<sup>th</sup> August, 2022 in which it reiterates the averments in the Claim and in the affidavits filed by the Claimant.
32. The Respondent filed submissions and its List and Bundle of Authorities both dated 18<sup>th</sup> August, 2022. After reiterating the averments in its Memorandum of Reply and Replying Affidavit of Mr. Wasike, the Respondent crystallized the issues for determination as follows:
  - a. Whether the Respondent should sign Recognition Agreement with the Union.
  - b. Whether the Respondent should implement the deduction of Union dues from the employees who had consented to be members of the Union.
  - c. Whether the Respondent should be barred from transferring he services of its category three employees to Staffing Africa Ltd.
33. On the first issue the Respondent submits that the Claimant has not met the threshold for recognition under section 54 of the *Labour Relations Act*. It submits that even the employees recruited are no longer in the employment of the Respondent. For emphasis the Respondent relies on the decisions in Kenya National Union of Nurses v Friends Lugulu Mission Hospital [2021] eKLR and Kenya Union of Commercial Food & Allied Workers v Attorney General & Another; Central Organisation of Trade Unions (Interested Party) [2020] eKLR.
34. On the 2<sup>nd</sup> issue the Respondent submits that the employees on account of whom the Clamant seeks deduction and remittance of union dues are no longer in its employment. Relying on section 48(2) of the *Labour Relations Act* and the decisions in Kenya Chemical & Allied Workers Union v Base Titanium Limited [2016] eKLR and Kenya Union of Commercial Food & Allied Workers v Mitra Enterprises Limited 7 Another [2021] eKLR, the Respondent submits that it cannot be compelled to implement deduction of union dues from the 55 members of the Claimant as they are no longer in its employment.
35. On the 3<sup>rd</sup> issue, the Respondent submits that upon restructuring it terminated the employment of all the 3 categories of its employees and paid their terminal dues. That the said employees were thereafter free to apply for employment by the outsourcing company Staffing Africa Limited and those who applied did so voluntarily and were employed by the said outsourcing company.

### **Analysis and Determination**

36. I have considered the pleadings and submissions of the parties. The parties are in agreement that the Claimant recruited 55 employees of the Respondent. What they do not agree on is that the Respondent had 3 categories of employees being permanent, contract and temporary. They further do not agree on whether there was genuine restructuring that led to the Respondent outsourcing of labour to Staffing Africa Limited or the Respondent deliberately outsourced staff in a bid to lock out the Claimant from recognition by the Respondent. The parties also do not agree on the remedies sought by the Claimant. These therefore, are the issues arising for determination.



37. The Respondent states that it had 3 categories of employees being pensionable, contract and temporary employees. That the Claimant targeted its temporary employees for recruitment into union membership.
38. The Claimant denied that the Respondent had different categories of employees and insisted all the Respondent's employees were permanent.
39. The Respondent did not adduce any evidence to support its averment. It did not submit any copies of appointment letters or contracts. It did not submit its terms and conditions of employment or any other document that can prove this fact.
40. On the contrary, I have looked at the letters at Annexure "D" of the Respondent's List and Bundle of Documents which is a bundle of letters of Separation and Payment of Terminal Dues from the Respondent to the employees. The letters at item 2 and 3 thereof set out the accrued leave and severance pay for the employees. The longest serving employees according to the list had served for 15 years while the shortest had worked for one year. The full list is as given below:

Name of Employee Years of Service

1. Dennis Odhiambo Omanje 15
2. Simon Gakkunya Wahome 2
3. Alex Mutinda Kingoo 3
4. Edward Nyongesa Wanyonyi 3
5. Robert Onyango Odhialo 11
6. Japheth Boniface Otwere 13
7. Pennina Kithunga Mkaau 4
8. Hellen Moraa Mokaya 4
9. Kiplangat Tonui Robert 4
10. Ann Kangendo Nyaga 3
11. John Walumbe 2
12. Hillary Chirchir Chelal 2
13. Charles Kihwaga Muriuki -
14. Janet Akinyi 1
15. Robertinah Nailani -
16. Charles Osor 3
17. Richard Akeri 1
18. Kelvin Kisua 1
19. Collins Mwangi -
20. Sharon Awino Oketch 1
21. Nicholas Savuni 2



22. Julius Wambura Peter 5
23. Rachael Mutindi Nzioki -
24. Joshua Nyang'au Osebe 13
25. Malakwe Kalundi 2
26. Kefon Hefron Okhako 8
27. Onyango Everylne Ochieng 0.6
28. Charles Muinde 5
29. Robert Musembi Kimanzi 3
30. Ayub Onyango Ogola 4
31. Chrispinus Wangila Wakhungu 5
32. Carolus Kevin Oloo 6
33. Thomas Odhiambo Nanga 2
34. Ismael Mukulo Makokha 1
35. Dennis Wafula Masanja 2
36. Michael Omondi Demba 2
37. Martin Kimanai Makhanu 13
38. Geoffrey Nyongesa Wasike 3
39. Halary Nyangesa Mukhebi 6
40. John Otieno Nina 12
41. Kenneth Jumba Sagide 14
42. Ezekiel Oluoch 3
43. David Litema 13
44. Emmanuel Wafula -
45. Hassan Simiyu Kokonya Wamalwa 2
46. Leornard Kibet Koech 2
47. Nicholas Mutwiri 2
48. Christopher Kimatu 7
49. Dorothy Wangui 1
50. Derrick Aruvisia 5
51. Vincent Ouma -
52. Duncan Onyango 3



53. Felix Otete 3
54. Doreen Maramba 6
55. Rukia N. Asman 4
56. David Ogol Alwar 5
57. Josiah Benard Odera 14
58. Zakayo Wanyonyi Khaukha 4
59. Obadiah Baraja 3
60. Stephene Nyamiramba Otaru 6
61. Benson Mulinda Juma 4
62. Samwel Otieno Denja 3
63. Isaac Barasa Nyongesa 5
64. Richard Dudi 2
65. Lilian Nafula Wabwoba 6
66. Luka Rasto Shirandula 6
67. Millicent Simiyu 5
68. Jackline Kasoi -
69. Dennis Wamalwa 2
70. John Mula 1
71. Richard Simidi 4
72. Benson Shtindo 3
73. Raphael Kisilu 2
74. Esther Ngunya 1
75. Gladys Mwangi 5
76. Veronicah Wambua 3
77. Johnson Nyamai 0.5
78. Josphine Kerubo 0.5
79. Evans Onyango Afuma 2
80. Winfred Ouno 7
81. Jsphat Mang'ana 7
82. Victor Chirchir -
83. Dorcas Wangari -



84. Richard Nyabuto 7
85. Pius Omondi 1
86. Aggrey Odhiambo 11
87. Mary Muthoni 2
88. Moureen Misiko Mating'i 2
89. Judith Juma Nliaka 13
90. Lilian Nafula Simiyu 1
91. Harrison Namai Andanje 2
92. Victor Mwendwa Kioko 9
93. Charles Musya Ndinda 9
94. Scholarsticah Kanini Mwende 3
95. Victor Nthenya Agnes 3
96. Vincent Alule Kevogo 4
97. Silvano Onsulu Anjimbi 2
98. Edwin Wangila -
99. Sammy wekesa Ngutuku -
100. Henry Rotich 0.4
101. Kennedy Murimni 2
102. Emmanuel Bett 1
103. Felistus Nzioki 0.5
104. Derrick Omari 2

41. From above the list, it is evident that the Respondent had a total of 104 unionisable employees out of whom the Claimant had recruited 55, more than a simple majority of the unionisable employees. It was therefore qualified for recognition under section 54 of the *Labour Relations Act* which provides that an employer shall recognize a trade union which had recruited a simple majority of its unionisable employees.
42. The averment that the Respondent had decided earlier to outsource labour is not supported by the evidence on record. The Memo dated 1<sup>st</sup> April, 2021 referred to outsourcing of temporary staff only. The Memo dated 13<sup>th</sup> April, 2022 referred to factories labour, research non-permanent and pensionable labour and any other labour that is short term across the business. However, among the employees laid off were those who had served for up to 15 years and who cannot be referred to as temporary labour.
43. As already stated above, the Respondent did not adduce any evidence to disprove the averments of the Claimant that the employees targeted for layoff were those who had joined the membership of the Claimant and not temporary employees.



44. The rights to associate and to join and participate in union activities are enshrined in Articles 36 and 41 of the Constitution as well as section 4 of the Labour Relations Act. It is therefore a violation of a constitutional right and unfair labour practice for an employer to deny any employee the right of association or the right to join and participate in union activities, and to terminate or outsource employees to deny them the constitutional rights.
45. Besides the foregoing, the laying off of the employees of the Respondent which was indeed a redundancy, did not comply with the provisions of section 40(1) of the Employment Act which provides:
40. Termination on account of redundancy
- (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—
- (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
  - (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
  - (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
  - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy;
  - (e) the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
  - (f) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
  - (g) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
  - (h) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.
46. The Respondent did not comply with the requirement for notification of the employee and the Labour Officer. The Respondent further was aware that the Claimant had recruited its employees and was therefore entitled to notification but failed to do so as required in section 40(1)(a) of the Act.

## Remedies

47. The Claimant prayed for several remedies. The first is that the Respondent be ordered to retain the services of the Claimant's members. Because of the time that has passed since the redundancies and/or layoffs, this remedy is no longer available to the Claimant's members. Guided by the Court of Appeal decision in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR where the Court awarded damages in lieu of reinstatement, I will instead award the members



of the Claimant compensation for the unfair labour practices of the Respondent that led to their lay-off and the failure to comply with redundancy procedures.

48. In awarding compensation, I take into account the reason for the layoff which constituted an unfair labour practice, the length of service of the employees and the fact that the Respondent did not comply with the law on redundancy. I have further taken into account the fact that the Respondent violated the right of the employees to association and joining and participation in union matters.
49. I thus award compensation as follows:
  - a. For employees who had served for more than 10 years I award them maximum compensation of 12 months salary as compensation.
  - b. For those who had served 8 but less than 10 years I award them 10 months salary.
  - c. For those who had served 6 but less than 8 years I award 8 months salary.
  - d. For those with one year up to 5 years I award 6 months salary.
  - e. For those with less than one year, I award 2 months salary.
50. For the avoidance of doubt, the award relates only to the employees who were members of the Claimant as per check off forms.
51. I further award the Claimant costs of Kshs. 50,000 which in my view is reasonable to cover disbursements as well as other expenses associated with instituting and prosecuting the suit.
52. Interest shall accrue at court rates from date of judgment.

**DATED, DELIVERED AND SIGNED AT ELDORET THIS 23<sup>RD</sup> DAY OF JANUARY, 2025.**

**M. ONYANGO**

**JUDGE**

