



**Kenya Engineering Workers Union v Crom Impex (K) Limited (Cause
279 of 2019) [2025] KEELRC 8 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 8 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 279 OF 2019
S RADIDO, J
JANUARY 16, 2025**

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
CROM IMPEX (K) LIMITED RESPONDENT

RULING

1. In a judgment delivered on 21 September 2023, the Court entered judgment in favour of the Kenya Engineering Workers Union (the Union).
2. The Union then moved against Crom Impex (K) Ltd (the Respondent) asserting contempt of court. At the same time, the Respondent filed a Motion seeking stay of execution and a review of the judgment.
3. The Court heard both applications and, in a Ruling, delivered on 28 February 2024, dismissed the contempt application. The Motion for review was also dismissed.
4. Undeterred, the Respondent filed another Motion dated 13 May 2024, seeking orders:
 - i. ...
 - ii. That the decree issued by this Honourable Court on 3rd October 2023 be varied, reviewed and set aside on the ground that there is new evidence necessitating a review and setting aside of the decree of the Court.
 - iii. That a declaration be and is hereby made that the Claimant does not meet the statutory threshold of a simple majority of unionisable employees to warrant the execution of a recognition agreement with the Respondent/applicant.
 - iv. That the costs of the application be provided for.



5. The primary grounds advanced by the Respondent in support of the Motion were that some of the employees who had joined the Union had resigned from the Union through letters dated 18 April 2019, 30 April 2019, and 26 April 2024 and that because of the changed circumstances, the Union did not have a simple majority warranting entering into a recognition agreement.
6. When served with the Motion, the Union filed Grounds of Opposition dated 24 May 2024, contending that the Respondent had made a similar application dated 21 December 2023 and that the Motion was contrary to section 16 of the *Employment and Labour Relations Court Act* and Rule 33(6) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016.
7. The Respondent filed submissions dated 6 July 2024 in respect to the Motion. The Union filed its submissions dated 19 July 2024.
8. The Court gave directions on 31 October 2024.
9. The Court has considered the Motion, affidavit in support, Grounds of Opposition and submissions and concludes that the Motion is vexatious and without merit for the following reasons.
10. One, in the Motion dated 21 December 2023, the Respondent sought review and or setting aside of the judgment on the grounds that it had received resignation notices from its employees on 10 April 2019, 18 April 2019, 30 April 2019, September 2019 and 31 March 2021.
11. In the instant Motion, the Respondent has made reference to resignation notices dated 10 April 2019, 18 April 2019, 30 April 2019, 31 March 2021 and 26 April 2024.
12. The Respondent has not disclosed why it could not or did not fully disclose to the Court all the resignation letters it had received when making the first application.
13. Some of the employees alleged to have resigned in the Motion dated 21 December 2023 are named in the Motion now under consideration.
14. Two, the judgment sought to be reviewed was delivered on 21 September 2023, long after the purported resignations. The judgment determined the facts/issues that were presented before the Court at the material time.
15. It is not open to this Court to reopen the judgment and admit any intervening facts which arose post-judgment such as resignations in 2024.
16. Three, change of circumstances cannot be a ground for a review of the judgment considering the dynamic nature of the employment arena wherein employers and employees separate and new ones are recruited.
17. Four, it is instructive that the Respondent opted not to defend the Cause leading to the judgment it seeks to review despite having been served with process more than once as noted in paragraphs 4 and 8 of the judgment.
18. Lastly, the Respondent had the opportunity to present its whole case on review of the judgment when it moved the Court at the first instance. It has decided to litigate in instalments, leading to a waste of precious judicial time.
19. The Respondent's Motion was misplaced. It did not have any genuine foundation or legal anchor.

Orders

20. In light of the above, the Motion dated 13 May 2024 is dismissed with costs.



DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 16TH DAY OF JANUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Kenya Engineering Workers Union

For Respondent Archer & Wilcock, Advocates

Court Assistant Wangu

