



REPUBLIC OF KENYA



KENYA LAW
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**Tailors and Textiles Workers Union v Vajas Manufacturers Limited (Cause
680 of 2012) [2025] KEELRC 1 (KLR) (16 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 680 OF 2012
L NDOLO, J
JANUARY 16, 2025**

BETWEEN
TAILORS AND TEXTILES WORKERS UNION CLAIMANT
AND
VAJAS MANUFACTURERS LIMITED RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 3rd October 2019, the Claimant Union proceeds against the Respondent for payment of terminal dues to its member, Collince Otieno Onyunka (the Grievant). The Respondent filed a Memorandum of Response dated 17th February 2023.
2. By consent of the parties, the matter proceeded on the basis of pleadings and written submissions.

The Claimant's Case

3. The Claimant states that the Grievant, Collince Otieno Onyunka, was employed by the Respondent as a Sales Executive effective 5th October 2005. The Grievant worked for the Respondent for 14 years, after which he voluntarily resigned from employment. At the time of leaving employment, the Grievant earned a monthly salary of Kshs. 14,000.
4. The Claimant further states that the Grievant was discharged on 31st January 2019 but was not paid his terminal dues as per clause 10 of the obtaining Collective Bargaining Agreement (CBA).
5. The Claimant's claim is that the Grievant is entitled to 19 days' pay for each completed year of service, aggregating to Kshs. 409,230.80. The Claimant further states that the Grievant is entitled to a certificate of service under Section 51 of the *Employment Act*. Additionally, the Claimant claims 12 months' salary as damages for breach of clause 7 of the CBA.



The Respondent's Case

6. In its Memorandum of Response dated 17th February 2023, the Respondent admits having employed the Grievant as a Tourist Sales Executive from October 2009 until January 2019, when he served his resignation letter, terminating his employment effective 31st January 2019. The Respondent pleads the Grievant's exit salary as Kshs. 43,255.
7. The Respondent further concedes the existence of a Recognition Agreement between itself and the Claimant Union. The Respondent however states that throughout his employment period, the Grievant was not a member of the Union. According to the Respondent, the Grievant was paid all his terminal dues as per his employment contract.
8. The Respondent submits that a non-union member cannot lay a claim under a CBA, to which they were not a party.

Determination

9. The Claimant's claim, on behalf of the Grievant, is based on a CBA negotiated and concluded between the Claimant and the Respondent. The Respondent's position is that during his employment, the Grievant was not a member of the Union and cannot therefore benefit from provisions of the CBA. The Respondent adds that the position of Sales Executive held by the Grievant fell within the management cadre.
10. In advancing this position, the Respondent relied on the decision in Banking Insurance and Finance Union v Middle East Bank (K) Limited [2020] KEELRC 1869 (KLR) where it was held that that the right to unionise may be restricted through a CBA, Employment Contract or Industrial Relations Charter.
11. The Claimant did not adduce any evidence to counter the Respondent's assertion that during the time of his employment, the Grievant was not unionised. Consequently, the Grievant's claim, which is premised on the provisions of CBA, was not proved.
12. The claim therefore fails and is dismissed with an order that each party will bear their own costs.
13. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY JANUARY 2025

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JUDGE

Appearance:

Mr. Omondi (union representative) for the Claimant

Mr. Okeche for the Respondent

