Kenya Shipping Clearing Freight Logistics and Warehouses Workers Union v Vegro (K) Limited; Kenya Union of Commercial Food and Allied Workers (Interested Party) (Employment and Labour Relations Cause 145 of 2018) [2025] KEELRC 1482 (KLR) (22 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1482 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS CAUSE 145 OF 2018

HS WASILWA, J

MAY 22, 2025

BETWEEN

KENYA SHIPPING CLEARING FREIGHT LOGISTICS AND WAREHOUSES WORKERS UNION ..... CLAIMANT

AND

VEGRO (K) LIMITED ..... RESPONDENT

AND

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS ..... INTERESTED PARTY

JUDGMENT

1. The Claimant union instituted this claim vide a Memorandum of Claim dated 1st October 2020 wherein it prays for judgment against the Respondent THAT: -

    i. The Respondent to pay redundancy to all employees in the current trademark of about 1000 employees.

    ii. The Respondent to pay 60 employees the two days they worked on 25th and 26th October 2017 overtime.

    iii. The Respondent to refund the employee money they paid when they went for medical check-up in 2017 Kshs. 1000 per employee.

    iv. The employees to be allowed to elect their trustees to Kennendia Insurance Scheme.

    v. The Respondent to deposit five (5) million which is not reflecting in the current employee provident scheme Kennedia Insurance.

vi. The Respondent to pay the costs of the suit.

Claimant's Case

2. The Claimant union avers that it is a registered trade union representing the employees engaged in shipping agencies, clearing and forwarding, freight logistics, warehousing and warehouses for goods meant for import and export in the Republic of Kenya.

3. The Claimant union avers that the Respondent is a registered trade mark to trade especially as an exporter of perishables in Kenya.

4. The Claimant union avers that it was approached by the Respondent's employees who expressed their work conditions influencing it to reach out to the Respondent, however, the Respondent in collaboration with a rival union opposed the same. The Claimant union reported the employees' grievance to the Respondent and the Ministry of Labour vide letters dated 5/3/2018, 26/3/2018 and 12/4/2018 respectively.

5. The Claimant union avers that in May 2018, the Respondent subjected its employees to medical check-ups to be paid in cash but no certificate was issued to them. Vide a letter dated 22nd May 2018, the Claimant union wrote to the Respondent clarifying that if it is the workers to pay the medical check-up fee then they should be issued a receipt or the same reflect in their payslip of the month.

6. The Claimant union avers that in April 2018, the Respondent vide its memo dated 14th April 2018 informed its employees that their wages/salaries will be deducted if they clock in twenty minutes after the normal time of starting work, forgetting there is only one clocking machine and the arrival at work can be affected by traffic. The union vide its letter dated 19th April 2018 cautioned the Respondent to consider the same.

7. The Claimant union avers that it cautioned the Respondent against deducting employees' salaries with an excuse that they failed to clock in properly while the labour cost shows such an employee worked that day.

8. Further, vide its letter dated 5th February 2018, the Claimant union requested the Respondent to pay 60 employees whose salaries were deducted on 25th and 26th October 2017 with reason that they did not clock properly but worked the whole day.

9. The Claimant union avers that vide a memo dated 20th September 2018, the Respondent informed its workers that it has changed its trademark from VEGPRO (K) Ltd to VP Group without consulting its employees. The memo further stated that it shall roll out an intensive exercise from 24th September 2018 to do fresh registration for VP employees.

10. The Claimant union argues that the memo failed to state the state of the previous years the employees served in the current trade mark and if the payroll number changed and what will happen to Kennedia Insurance Scheme as the payroll number is their account number in the scheme.

11. The Claimant union further argued that the employees never elected a trustee to the scheme and the Respondent never explained what will happen to the five million Kenya Shillings held by Kennedia Insurance Scheme.

Respondent's Case

12. In opposition to the Claim, the Respondent filed a Memorandum of Response dated 2nd July 2024.

13. The Respondent avers that the Claimant union is not the right union to represent its employees as pursuant to Section 54 of the *Labour Relations Act*, it has a valid recognition Agreement revised in January 2012 with the Interested Party.

14. It is the Respondent's case that the Recognition Agreement between it and the Interested Party provides for the procedure for handling employees' grievances which entails that the same be raised by the Interested Party's General Secretary or his authorised representative.

15. The Respondent avers that the Respondent and the Interested Party have negotiated, concluded and signed numerous Collective Bargaining Agreements (CBAs), the most recent came to effect on 1st June 2017 and was registered in court on 8th November 2017.

16. It is the Respondent's case that without recognition by an employer, a trade union even where registered to represent workers in a sector, remains a by stander to the disputes between workers and their employers.

17. It is the Respondent's case that pursuant to Section 56 of the *Labour Relations Act* a trade union's reasonable access to an employer's premises can only be granted with a Recognition Agreement, which does not exist between the Claimant and the Respondent.

18. The Respondent avers that there is no formal relationship between itself and the Claimant to enable the Claimant union represent its employees; further, the employees are rightfully represented by the Interested Party to whom they have made no complaints.

19. The Respondent denied the Claimant's allegations in respect of poor working conditions of its employees as alleged and that the letters date 5/3/2018, 26/3/2018 and 12/4/2018 were never served upon it.

20. The Respondent avers it is a stranger to the allegations of its employees being subjected to pay in cash medical check-up and avers that all its permanent employees are enlisted under the National Hospital Insurance Fund (NHIF) where it remits its contributions.

21. The Respondent denies it issued the Memo dated 14th April 2018 and put Claimant to strict proof on its allegations and authentication of the said document. The document further avers that the document is forged and does not belong to Mr. John Matanyi.

22. The Respondent avers that its managerial prerogative to manage its business and have disciplinary control over their employees and as such, it can proceed to issue Memos in terms of proper management of the company.

23. The Respondent avers that the memo in respect of clocking cut off time was reasonable and was issued after all prevailing factors were considered including traffic jam since it transports employees to work and the company vehicles are timeous. Further, it has never deducted any wages/salaries in terms of clocking cut off time.

24. The Respondent denies that it refused to pay the said employees who worked on 25th and 26th October 2017 and avers that it is their failure to register their attendance as is its practice that resulted to the delay in payment. Further, the obligation of raising any of its employees' grievances lies with the Interested Party and not the Claimant.

25. The Respondent avers that since 2010 it has operated under the trade name VP Group which is conglomeration of all companies and/ businesses managed by the same board of directors/ management. It maintains that it has always remained in the same business and there has been no

change of business ownership but only a rebranding exercise with no legal effect on the status of its employees.

26. The Respondent avers that no roles have been phased or diminished and neither are their new roles introduced at the workplace and no employee has been notified of any redundancy situation.

27. It is the Respondent's case that it is within its prerogative to streamline its systems to make the business better and sustainable for itself and this was intended to be achieved by introducing a change in the payroll numbers which has no effect on the employees' employment contracts.

28. The Respondent avers that the allegation that the employees are declared redundant and it is looking for new employees has no basis as the employees remain in its employment.

29. The Respondent avers that the change in payroll numbers has no bearing on the money held in the employees' insurance scheme and that every employee has an updated statement showing the current money in the account

Evidence in Court

30. The Monica Ndunge (CW1) adopted her witness statement dated 1st October 2018 as her evidence in chief and produced the Claimant's list of documents dated even dated as her exhibits marked 1-10.

31. Upon cross-examination, CW1 testified that herself and 2 others are members of the Claimant union but there is no evidence of membership in court.

32. CW1 testified that they have produced in court a list of members of the union which lists the three of them, however, the list has not been signed.

33. CW1 testified that she does not have a letter of authority to file this claim, however, she is a shop steward of the Claimant union.

34. CW1 testified that the Claimant union wrote to the Respondent seeking access, however, the said letter was not stamped by the Claimant.

35. CW1 testified that all employees paid Kshs. 1000 for medical check up and they were not issued any receipt. The employees signed with the company nurse.

36. CW1 testified that about 1000 employees were declared redundant but the Claimant union has not placed their names in court.

37. CW1 testified that she is not part of the 60 employees listed and none is a witness in court.

38. The Respondent's witness (RW1) Arthur Mwangi stated that he works as the Respondent's Human Resource Manager. He adopted his witness statement dated 2nd July 2024 as his evidence in chief and produced the list of documents dated 2nd July 2024 as his exhibits 1 and 2 respectively.

39. During cross-examination, RW1 testified that the Respondent's correct name is Vegpro Kenya Ltd and VP Group is only its brand name to enable it sell products in the international market.

40. RW1 testified that the employees' payroll changed from manual to digital.

41. RW1 testified that the employee registration exercise was a payroll transition and had nothing to do with VP Group. All its employees have their employment contracts under Vegpro (K) Ltd and VP Group did not change the form or condition of their employment.

42. RW1 testified that there was no redundancy.

43. RW1 testified that Monica Ndunge was an employee of the Respondent but was dismissed after a disciplinary issue. Charity is still an employee of the Respondent but she has never written a letter stating she is not a member of the Interested Party.

Claimant's Submissions

44. The Claimant union submitted that the trade mark which is the business name is the employer as it is understood employment contracts bear the business name and not the director's name, therefore, it is the business name that employs employees and not its directors.

45. The Claimant union submitted that no documents was produced in court to show that the employees were informed in writing about the change in the Respondent trade mark and the position of the previous years. It is the Claimant union's submission that immediately a payroll has changed that particular employee is a new employee as there is no written document connecting the previous services and the new.

46. On the provident fund scheme, the Claimant union submitted that it is managed by the Respondent's management as they are the trustees. Therefore, the management is aware of the operations of the scheme and the Respondent has not filed any document exonerating its management from the management of the scheme.

47. The Claimant union on the issue of non-payment of worked public holidays, it submitted that the Respondent knows who is on duty, the employees being subjected to clock in machine whenever they report on duty is a denial of their benefits. Additionally, the Respondent's argument that the employees failed to register is tantamount to unfair labour practices under Section 45 of the *Employment Act*.

48. It is the Claimant union's submission that despite the changes in the Respondent's trademark and payroll numbers, the Respondent failed to file any documents clarifying that these changes would not qualify as redundancy, leaving the employees uncertain on whether their position and benefits may be impacted.

49. The Claimant union submitted that the lack of clarity could create a perception that the changes in trademark and payroll numbers might be part of a restructuring effort aimed at reducing the workforce thus raising concerns of redundancy that have not been properly addressed.

50. The Claimant union submitted that the question of who is authorised to represent the claim is irrelevant to the substance of the dispute. Further, the matter concerning the Recognition Agreement between the Claimant union and the Respondent remains unresolved under ELRC Cause No. 1422 of 2018 which is under appeal.

Respondent's Submissions

51. It is the Respondent's submission that pursuant to Section 47(5) of the *Employment Act*, the burden of proving a cause of action in terms of the reliefs sought in the Claimant's Claim, rests on the Claimant. Discharging this burden involves presenting the list of the alleged grievants which was not produced by the Claimant. To legitimize its claim, the Claimant purportedly annexed a list of alleged employees in its submissions.

52. The Respondent submitted that the annexed list should be struck out as no leave was sought to have the same admitted in evidence. Further, pleadings were closed and the matter proceeded for hearing without the Claimant requesting to have the documents filed and admitted as part of the court record.

53. It is the Respondent's submission that the annexed list ought to be struck out as it is in violation of the Respondent's right to a fair hearing granted by Article 50 (1) of Constitution. The Respondent will be denied a chance to cross examine the Claimant's witness or to adduce its own evidence to counter the new evidence the Claimant seeks to produce and the Claimant being allowed to adduce such evidence at this juncture of filing submissions will be tantamount to reopening the case.

54. The Respondent submitted that the Claimant's witness lacked the locus standi to represent the employees in this matter as they neither filed authority to act/appear/plead allowing them to give evidence on behalf of the employees; nor were there letters on record demonstrating that the witnesses are indeed shop stewards as alleged. Therefore, the witnesses did not have the authority to testify on behalf of the employees, consequently this Court should strike out their testimony from the record

55. The Respondent submitted that the Claimant union is not entitled to the reliefs sought in the Claim as it failed to present evidence of the employees' salaries and/or justification for the prayers sought. Reliance was placed in *Ulalo v Nation Media Group (Cause 292 of 2018)* [2024] KEELRC 574 (KLR) (15 March 2024) (Judgment) where Byram Ongaya J held as follows:

> " The claimant has not offered justification for the base of the amounts claimed. There was no evidence on his last payment. No submissions were made in that regard.
>
> Leave claim will be declined just because the base of the claim is not specifically pleaded, particularized and then strictly proved as it is required as of trite law in special damages.
>
> Similarly, the service pay will no! be awarded because the claimant has not offered the base of the figures claimed. The Court finds that no submissions were made to justify the other claims and which are deemed abandoned."

56. The Respondent submitted that an employee cannot demand to be declared redundant, Section 40 of the *Employment Act* can only take effect at the behest of the employer and not the employee.

57. The Respondent submitted that the mere allegations cannot be relied on in court to prove a case. The Claimant allegation of redundancy on account of the change of trademark has not been backed by any evidence to prove the same and neither has any notice in proof been attached herein proving the alleged termination or an affidavit from the said employees confirming that they were terminated or declared redundant. No employee has come forward to allege any redundancy on account of the change of trademark.

58. It is the Respondent's submission that it has operated under the trade name VP Group which is a conglomeration of all companies and or businesses managed by the same board of directors/ management and it has always remained in the same business, there has been no change of business ownership. Further, the Respondent has continued to own and conduct business from the same premises, under the same management and no roles have been phased or diminished and no new roles have been introduced at the workplace nor has any employee has been notified of any redundancy.

59. The Respondent further submitted that the digitization of employee records and change of trade mark is an employer's prerogative to make to suit its business needs and the same does not amount to redundancy as alleged by the Claimant.

60. It is the Respondent's submission that the new serialization of payroll numbers does not have the effect of changing the status of the employee to a new employee as alleged by the Claimant. In the letter dated 20th September 2018, the employees were clearly informed that there shall be no loss of any benefit due to the process.

61. On whether the Respondent should pay sixty employees the two days they worked on 25th and 26th October 2017 and a refund of the money paid for medical check-up by the employees, it is the Respondent's submission that the same lack legal basis and must fail. No grievant came forth to lay a claim against the Respondent on these issues. Further, there is no receipt adduced before this Court as evidence of payment for medical check-up by the alleged aggrieved employees and no employee came to lay claim that they were not paid overtime.

62. The Respondent submitted that its Staff provident fund is managed by Kennidia Insurance and if there are any complaints in terms of unremitted dues and/or representation should be channelled to the said Insurance Scheme. Additionally, any complaint in respect of the scheme should be dealt with as per the provisions of Section 46 and 47 of the *Retirement Benefits Act* which for provides for appeals to the Chief Executive Officer and the Tribunal.

63. The Respondent further submitted that the Claimant has not placed on record any statement of account reflecting the pension amount nor any claim by a pension member as such all these claims must fail.

Interested Party's Submissions

64. The Interested Party submitted that the Claimant union has not provides any evidence that the Respondent's employees are their members so that they can act on their behalf and offer trade union representation on any grievance. Further, there is no proof that the Claimant has a Recognition and Collective Bargaining Agreement with the Respondent.

65. It is the Interested Party's submission that it is a settled practice that there cannot be two or more union representing the same set of employees as dual or multiplicity of unions within one enterprise is not allowed to avoid industrial animosity.

66. On the prayers sought, the Interested Party submitted that the Claimant has no right and/ or capacity to enforce the said clauses as they are not a party of the said Collective Bargaining Agreement.

67. The Interested Party submitted that the Respondent's Provident Fund Scheme is a scheme for payment of lumpsum and other similar benefits to employees when they leave employment or to their dependants upon death. It is a scheme with its own rules and is regulated by the Retirement Benefits Authority. Therefore, the Claimant does not have any capacity to pursue issues related to the scheme as the Retirement Benefits Authority is better placed to do so.

68. The Interested Party submitted that there is no evidence that unionisable employees ever raised such grievance with the Respondent. There is no evidence that the Scheme manager or the Retirement Benefits Authority were ever approached over the issues towards dispute resolution.

69. The Interested Party submitted that there is no evidence that this matter was ever referred to conciliation under Part VIII of the *Labour Relations Act*.

70. It is the Interested Party's submission that the Claimant has not provided any evidence that the change of the Respondent's trademark gave rise to any redundancies.

71. I have examined all the evidence and submissions of the parties herein. The first issue being raised by the Respondent is that the Claimant has no recognition agreement with them and so is not the rightful union to represent employees therein.

72. In considering this issue, I refer to Article 41(2) of the *Constitution* which states as follows:

> "(2) Every worker has the right— (a) to fair remuneration; (b) to reasonable working conditions; (c) to form, join or participate in the activities and programmes of a trade union; and (d) to go on strike."

73. The *Constitution* is clear that every employee has a right to join a union of their choice and the employees having chosen to join the Claimant union or the union of their choice, it matters not that the said union has no recognition agreement with their employer. The union is free to represent its members as in such a case even if there is no recognition agreement with their employer. The submission then that the Claimant union is not the right one to file this claim is a fallacy.

74. Having determined as above, the next issue is whether the Claimant has proven the claim before court. In the Claimant's claim, the Claimant came to court contending the role out of an intensive exercise of fresh registering of VP employees and issuing them with new serialization of payroll numbers. The Respondent averred that they never changed the employee payroll numbers but only changed their brand name VP for branding purposes.

75. The Respondent having denied changing their names nor changing employee numbers then the Respondent should be held on their word and should not change employee numbers that would result in their employees loosing their current employment status.

76. On the issue of the Respondent causing on loss of 5 million to the employees by moving their retirement scheme from Alexander Forbes to Kenindia, the Respondent denied this. The Claimant also failed to adduce any evidence to prove this allegation.

77. As to none payment of holiday work for 60 employees who worked on 25th and 26th October 2017, evidence has not been produced in court on this. The Claimant admitted that the Respondent failed to register their attendance but no evidence was adduced on this nor any notice to produce sought from the Respondent. It is therefore my finding that from the remedies sought, there is no evidence of any redundancy of 1000 employees as they are still in the employment of the Respondent.

78. As for the 1000/= paid per each employee for medical check-up, this is refundable the Respondent having not denied the same.

79. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND OF MAY, 2025.

HELLEN WASILWA

JUDGE