



ITA Marine Services Ltd & 10 others v Shevo & 6 others (Cause E129 of 2024) [2025] KEELRC 2417 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2417 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E129 OF 2024
K OCHARO, J
JULY 10, 2025

BETWEEN
ITA MARINE SERVICES LTD & 10 OTHERS & 10 OTHERS CLAIMANT
AND
SHILINGI SHEVO & 6 OTHERS & 6 OTHERS RESPONDENT

RULING

1. By a Notice of Preliminary Objection dated 5th January 2025, the 2nd Interested Party raises nine grounds upon which it wants the Claimant's suit herein struck out with costs. The grounds are;
 - I. That 1st, 2nd, 3rd, 6th, and 7th Claimants are duly recognised as employee representatives [shopstewards] and union office bearers under the relevant labour statutes. The claim herein is a contravention of the provisions of Section 55[2][e] of the *Labour Relations Act*, No. 14 of 2007, and Article 23[1] of *the Constitution* of Kenya, 2010, which govern the entitlement and scope of redress for violation of rights and fundamental freedoms.
 - II. That the 4th and 5th Respondents are neither members of the relevant trade union nor recognised as worker representatives. Furthermore, they have not been employed in the operational sectors or warehouses governed by the relevant labour agreements.
 - III. That the Claimants herein do not possess a formal Recognition Agreement, nor do they have a valid Collective Bargaining Agreement with the 2nd Interested Party. Instituting a claim based on a Collective Bargaining Agreement to which they aren't signatories constitutes an improper and vexatious use of judicial process, amounting to an abuse of court proceedings.
 - IV. That the individual, Boniface Odhiambo Were, has not furnished his identity nor provided requisite details of his employment. Furthermore, the letters of authority submitted are not executed by persons legally accredited for such purposes.



- V. That the Memorandum of Agreement submitted herein fails to align with the standard model established through the tripartite framework under the Industrial Relations Act, 2007. Furthermore, the said agreement is unsigned, thereby rendering it legally defective.
- VI. That all the filed Memoranda of Agreement are under the joint industrial council constitution.

What is the Joint Industrial Council?

- VII. That the Claimants therefore lack standing to lodge this suit.
- VIII. That the present suit is incompetent, legally flawed, defective, and constitutes an abuse of the court process, as this Honourable Court is not properly seized of the jurisdiction to entertain and adjudicate upon the matters raised in the claim.
- IX. That the 1st Interested Party is not a sectoral trade union duly registered in accordance with the provisions of section 14 of the *Labour Relations Act*, 2007.
2. This Court directed the parties to file their respective submissions. The Parties complied with the directions.
3. It is trite law that a properly taken preliminary objection must be on pure points of law. It shouldn't be on facts or a mixture of law and fact. It should not be one whose determination has to be after the interrogation of facts. I have carefully considered all the grounds raised in the Notice of Preliminary Objection; none of them can be said to be on a pure point of law. The matters raised can only be determined after taking evidence from the parties.
4. In the upshot, I find the 2nd Interested Party's preliminary objection dated 5th January 2005, not properly raised. It is hereby dismissed.
5. Orders accordingly.

READ, SIGNED, AND DELIVERED VIRTUALLY IN MOMBASA ON JULY 10, 2025.

SIGNED BY: HON. MR. JUSTICE OCHARO KEBIRA

MOMBASA ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2025-07-10 14:00:46

