



**Kenya Quarry and Mines Workers Union v Kilimapesa Gold (PTY)
Limited (Employment and Labour Relations Cause E006 of 2023)
[2024] KEELRC 431 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 431 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E006 OF 2023
BOM MANANI, J
FEBRUARY 29, 2024**

**BETWEEN
KENYA QUARRY AND MINES WORKERS UNION CLAIMANT
AND
KILIMAPESA GOLD (PTY) LIMITED RESPONDENT**

JUDGMENT

Background

1. The dispute between the parties relates to whether the Respondent should be compelled to negotiate a new Collective Bargaining Agreement (CBA) with the Claimant and pay to the Claimant outstanding trade union dues. The Claimant contends and the Respondent accedes that the parties have a subsisting Recognition Agreement which was entered into on 2nd August 2013. The parties have thereafter negotiated a couple of CBAs.
2. The Claimant contends that in 2018, the Respondent was unable to renew its mining license prompting it to temporarily close down until 2021 when it resumed operations.
3. The Claimant avers that after the Respondent resumed operations, efforts to have it negotiate a new CBA have proved futile. Further, it is contended that the Respondent has also failed to deduct and remit the requisite union dues to the Claimant.
4. On its part, the Respondent avers that some of the Claimant's members lost employment through redundancy. Further, a number of the Claimant's members are unwilling to have their salaries deducted in order to remit the union dues demanded by the Claimant. In effect, the Respondent suggests that the Claimant no longer enjoys the statutory threshold of membership to warrant recognition and negotiations of a new CBA.



Issues for Determination

5. After evaluating the pleadings and evidence on record, I am of the view that the following are the issues that require resolution:-
 - a. Whether the Respondent has a statutory duty to negotiate a new CBA with and remit trade union dues to the Claimant.
 - b. Whether the parties are entitled to the reliefs that they seek through their respective pleadings.

Analysis

6. The parties opted to have the dispute resolved through assessment of the pleadings and the documentary and affidavit evidence that is on record. Accordingly, the court issued directions in that regard and asked the parties to file written submissions.
7. Apart from filing the statement of defense 14th February 2023, the Respondent did not file any other pleadings and documents. Therefore, the only evidence on record is the verified statement of claim by the Claimant and the several documents referred to in the said statement.
8. The parties do not contest the facts that inform the dispute. If I understand the Respondent's position on the matter, its contention is that since the Claimant's membership has fallen below the statutory threshold that is provided for under section 54 of the *Labour Relations Act* and since some of the Claimant's members are reluctant to remit the requisite trade union dues, the instant suit is unmerited. The Respondent argues that it has no obligation to negotiate a new CBA with the Claimant or make the union deductions in the circumstances.
9. The law that governs the instant dispute is encapsulated in the *Labour Relations Act*. Under section 54 of the *Act*, once a Trade Union recruits a simple majority of an employer's unionizable workforce, it (the Trade Union) is entitled to recognition for purposes of collective bargaining. Once this recognition is granted, the employer has a statutory duty to enter into collective bargaining with the Trade Union.
10. If membership of the Trade Union falls below the statutory threshold and the employer wishes to revoke the recognition agreement, it (the employer) must move the National Labour Board for this purpose (see section 54(5) of the *Act*). Until this is done, the subsisting Recognition Agreement remains in force and the parties are presumed to enjoy the requisite statutory threshold for purposes of collective bargaining.
11. The Respondent asserts that the Claimant's membership has fallen below the permissible threshold. Yet, it provides no evidence to back this assertion.
12. Importantly, if this was the case, the Respondent ought to apply to the National Labour Board to nullify the Recognition Agreement. There is no evidence that this has been done
13. In effect, the Recognition Agreement between the parties remains in force and is binding on them. It is so declared.
14. With respect to withdrawal of union membership and cessation of deduction of union dues from members of a Trade Union section 48 of the *Act* provides in part as follows:-

‘An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.



A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.

An employer shall forward a copy of any notice of resignation he receives to the trade union.”

15. By virtue of these provisions, an employer can only decline to deduct trade union dues from employees who are members of a Trade Union if: the employees have resigned from the Trade Union in writing; the resignation has been tendered to the employer; the employer has forwarded a copy of the instrument to the Trade Union.
16. The record before the court does not show that the employees who have allegedly declined to have union dues deducted from their salary have resigned from the Claimant. Similarly, there is no evidence that resignation notices if any, have been served on the Claimant as required by law.
17. In effect, the Respondent has no basis to justify its failure to deduct and remit union dues to the Claimant. It is so declared.

Determination

18. In the ultimate, I find that the Claimant’s case is merited. Accordingly, I declare and order as follows:-
 - a. The Respondent has a statutory duty to negotiate a new CBA with and remit trade union dues to the Claimant.
 - b. The Respondent is ordered to cease forthwith from engaging in actions that amount to violation of the right to fair labour practice by failing, without justifiable cause, to negotiate a fresh CBA with the Claimant and collect and remit to the Claimant trade union dues as required in law.
 - c. The Respondent is ordered to resume the collective bargaining process with the Claimant forthwith and in any event within 14 days from the date of this order.
 - d. Since the Claimant was not represented by an advocate, it is not entitled to recover costs under the *Advocates Remuneration Order*. However, it (the Claimant) shall recover the actual disbursements it incurred in prosecuting this action.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF FEBRUARY, 2024

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE

