



**Kenya Concrete, Structural, Ceramic Tiles, Wood Plys & Interior
Design Union Workers v Kelco Aluminium Works Limited (Cause
E104 of 2022) [2024] KEELRC 365 (KLR) (28 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 365 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E104 OF 2022
L NDOLO, J
FEBRUARY 28, 2024**

BETWEEN
**KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOOD PLYS &
INTERIOR DESIGN UNION WORKERS CLAIMANT**
AND
KELCO ALUMINIUM WORKS LIMITED RESPONDENT

JUDGMENT

Introduction

1. The issues in dispute as stated by the Claimant in its Statement of Claim dated 15th February 2022 are:
 - a. Refusal by the Respondent to deduct and remit union dues to the Claimant Union, with effect from 6th June 2021;
 - b. Non-compliance with Legal Notice No 5 of 2022 by the Respondent;
 - c. Refusal by the Respondent to recognise the Claimant Union;
 - d. Refusal to negotiate a Collective Bargaining Agreement (CBA).
2. When the parties appeared before me on 9th November 2023, they agreed that the matter be determined by way of the pleadings and submissions filed in court.

The Claimant’s Case

3. The Claimant states that it has recruited a total of 27 of the unionisable employees of the Respondent but adds that the Respondent has failed to remit union dues in contravention of Legal Notice No. 5 of 5th January 2022 and Section 48(3) of the [Labour Relations Act](#).



4. The Claimant accuses the Respondent of engaging in anti-trade union activity in contravention of Articles 27(2) and 41(2)(c) of the Constitution, Section 4(1) of the Labour Relations Act and ILO Convention No 87.
5. The Claimant further accuses the Respondent of failing to recognise it for purposes of collective bargaining, contrary to Section 54 of the Labour Relations Act.
6. The Claimant therefore seeks the following remedies:
 - a. An order directing the Respondent to comply with the mandatory provisions of Sections 48 and 54 of the Labour Relations Act;
 - b. An order directing the Respondent to sign a formal Recognition Agreement with the Claimant Union and commence CBA negotiations within 30 days from the date of signing of the Recognition Agreement;
 - c. An order barring the Respondent from intimidating and forcing the Claimant's members to withdraw from the Union.

The Respondent's Case

7. In its Statement of Defence dated 20th May 2022, the Respondent states that it operates in the manufacturing sector, importing and selling glass used for partitions, sliding doors, sliding folding doors, bus windows and glass showers. The Respondent adds that it does not deal with ceramics, wood or interior design.
8. The Respondent denies that the Claimant has recruited 27 employees and states that at the time the dispute was reported for conciliation, the Claimant had recruited 17 employees out of a unionisable workforce of 43.
9. The Respondent claims that Legal Notice No 5 of 5th January 2022 is misleading and ambiguous as it purports to direct any employer who employs members of the Union to deduct union dues. According to the Respondent, the Union must seek to recruit from a relevant sector.
10. The Respondent asserts that the Claimant has filed this suit prematurely before ascertaining the true position regarding its membership.

Findings and Determination

11. By its claim, the Claimant seeks firstly, deduction of union dues and secondly, recognition for purposes of collective bargaining.
12. The Respondent challenges the Claimant's right to represent workers in the sector in which the Respondent operates while at the same time conceding that the Claimant had recruited some members from its workforce.
13. As held by the Court of Appeal in its decision in *Modern Soap Factory v Kenya Shoe and Leather Workers Union* [2020] eKLR there is a distinction between representation of workers by their trade union and recognition of the trade union by an employer for purposes of collective bargaining.
14. The condition under which a trade union may be recognised by an employer is contained in Section 54(1) of the Labour Relations Act which provides as follows:
 - 54.



- (1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents a simple majority of unionisable employees.
15. Regarding representation, which entitles the Claimant Union to collect union dues from its members, the Respondent concedes that the Union has recruited some members from its workforce but disputes the number given by the Claimant. The total number of the Respondent's unionisable employees is also a matter in contest.
16. None of the parties tendered viva voce evidence to support its position. There was however no contest that the Claimant has recruited some members from the Respondent's workforce.
17. I have considered the pleadings and submissions filed by the parties and have reached the conclusion that the ends of justice will best be served by a census at the Respondent's premises.
18. I therefore direct the Chief Industrial Relations Officer to designate a Labour Officer to conduct a census at the Respondent's premises with a view to establishing the following:
- a. The names and designations of all unionisable employees within the Respondent's establishment;
 - b. The names and designations of unionisable employees who are members of the Claimant Union.
19. The designated Labour Officer shall file their report in court within the next sixty (60) days from the date of this judgment.
20. I make no order for costs at this stage.
21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF FEBRUARY 2024

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JUDGE

Appearance:

Mr. Mwenesi for the Claimant

Mr. Okeche for the Respondent

