



**Kenya Plantation & Agricultural Workers Union v Beauty Line Limited (Employment and Labour Relations Cause E007 of 2023) [2024] KEELRC 657 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 657 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E007 OF 2023**

**HS WASILWA, J  
MARCH 19, 2024**

**BETWEEN  
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT  
AND  
BEAUTY LINE LIMITED ..... RESPONDENT**

**RULING**

1. By a ruling delivered by this Court on the 28<sup>th</sup> September, 2023, this Court directed the labour officer to write a report on the unionisable employees after doing a head count of all the employees and present it before this Court. By a report dated 16<sup>th</sup> November, 2023, Margaret Obegi, the Sub County labour officer, stated that the unionisable employees are 1,765, where by 1448 voted in favour of wanting the Union, 93 voted against the Union and 19 were spoilt voted, therefore that the total cast votes were 1560.
2. Based on this Report the Respondent/ Applicant filed the Application dated 19<sup>th</sup> December, 2023, brought pursuant to Section 3A of the Civil Procedure Act, Section 53 of the Labour Relations Act, order 51(1) of the Civil Procedure Rules and all other enabling provisions of the law, seeking for the following Orders; -
  - a. Spent.
  - b. That the Labour officer's report dated 16<sup>th</sup> November, 2023 be struck out for being flawed.
  - c. That an Order do issue directing that the recruitment process as done by the Labour Officer and as in the Report dated 16<sup>th</sup> November, 2023 be disregarded.
  - d. That costs of this Application be provided for.
3. The application is premised on the grounds on the face of the Application and the supporting affidavit of Julius Muga , the Applicant's Human Resource officer, sworn on 19<sup>th</sup> December, 2023.



4. In the affidavit, the applicant stated that as per the direction given by the Court, the labour officer was only tasked with finding out the number of unionisable employees. On the contrary the Labour officer conducted a head count and an election which was in itself a recruitment process.
5. He stated that in conducting the election, the labour officer overstepped her mandate as instructed by the Court instead of only finding out the number of unionisable employees vis a vis the number of employees.
6. It is on that basis, that the Applicant prayed for the Application to be struck out. In any event that as it stands, the Respondent has only recruited 263 employees, which does not meet the simple majority threshold required by the law.
7. It was also stated that there does not exist any Recognition Agreement between the Applicant and the Respondent. He thus prayed for the Labour officer's report to be struck out and recruitment carried out via the report be disregarded.
8. Directions were taken for the parties to submit on the report, where the Applicant filed on the 7<sup>th</sup> February, 2024 and the Respondent filed on 14<sup>th</sup> February, 2024.

#### **Claimant/ Respondent's Submissions.**

9. The Respondent submitted on two issues; whether the Labour Officer conducted a head count only and or an election and whether the prayers sought should issue.
10. On the first issue, it was submitted that in accordance with section 2 and 54(1) of the [Labour Relations Act](#), the Union has met the threshold necessary as stipulated by law and has recruited a simple majority of the total number of unionisable employees of the respondent. It is elaborated that when the labour officer conducted the head count exercise, it was conducted in an impartial, transparent and fair manner to both parties who were well represented during the exercise and at no point were elections conducted.
11. The union denied allegations that elections were conducted and stated that there were no polling booths, election materials for example ballot boxes and a tallying of the same, to justify allegations that elections were carried out. Therefore, that the applicant's application is malicious, vexatious and a total abuse of process of court and should be dismissed with costs to them.
12. It was argued that it is a principle of law that whoever lays a claim before the court against another has the burden to prove it as provided for under sections 107 and 108 of the [Evidence Act](#) and buttressed by [The Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 17, at paras 13 and 14](#): describes it thus:-

“The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues...The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced, As the weight of evidence



given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence?”

13. The Respondent also relied on the case of *CMC Aviation Ltd v Crusair Ltd (NO. 1)* [1987] KLR 103 as follows; -

“The pleadings in a suit are not normally evidence. They may become evidence if they are expressly or impliedly admitted as then the admission itself is evidence. Evidence is usually given on oath. Averments Are not made on oath. Averments depend upon evidence for proof of their contents.”

14. On whether the prayers sought should issue, it was submitted that this court ought to exercise its discretion favour of the Respondent. That unless this Honorable Court compels and/or directs the applicants to agree with the labour officers report the employees of the Respondent stands to suffer prejudice and victimization due to the current industrial relations between the parties as it's the respondents' responsibility to protect and shield the employees' rights and freedoms at the work place as required by law. Further, he urged the Court to direct the Employer to agree with the labour officers report conclude the recognition agreement and Collective Bargaining Agreement with the respondent to protect the rights of its workers who are unionisable.

#### **Respondent/ Applicant's Submissions**

15. The Applicant submitted that pursuant to the Union's application for recognition, the Respondent employer gave a list of the members of the Respondent's employees who are recruited by the Union vis a vis the total number of unionisable employees. Upon hearing the application by the Union, the Court in its ruling, made the following order;-

“In view of the omission from both parties, the only solution would be to direct that the labour officer to write a report on the unionisable employees after doing a head count vis a vis the number of employees and present the same before this Court for consideration.”

16. Consequently, the Respondent provided before Court the list of its employees who were members of the Union and the total number of the Respondent employees who were unionisable. On the basis of that, the Labour officer was obligated to obtain from the Union the number of employees who were its members and ascertain that vis a vis the total employees of the Respondent. Therefore, that it was a requirement for the Labour officer, alive to the matter before Court to avail to the Court, the individual number of unionisable employees.
17. It was argued that the Labour officer was required to receive the record of the Claimant on its members who were employees of the Respondent, establish the workforce of the Respondent as stated and give a report to the Court on the total number of unionisable employees. However, that no such report has been filed before this Court.
18. He analyzed the report before court and stated that what is before court is a report that speaks of votes; votes in favour of the Union and against the Union and it does not indicate the number of unionisable employees or number of members of the Respondent that are employed by the Respondent. Thus, it is not possible to determine the effect as per the ruling of the Court. Nonetheless, and without considering the alleged “votes”, the persons who have declared being unionisable are more than 1000 and this shows the list of the members recruited by the Union does not meet the statutory threshold of 50% plus 1.



19. It is on that note that the Respondent submitted that the application by the Claimant union for recognition is not merited and should be dismissed with costs.
20. I have considered the averments and submissions of the parties herein. This court in its ruling directed the Labour Officer to do a head count of the union members in order to determine whether there was a simple majority of union members to enable recognition.
21. The Labour Officer in his report indicated the number of votes cast for the union as against the union. What was expected of the Labour Officer was to do a head count of the members who are for the union as against those not in the union.
22. The Respondents aver that the officer conducted elections as opposed to a head count which was not ordered by court.
23. I have considered the report as submitted vis a vis the submissions of the parties. What emerges is that there are more employees of the Respondent who are in the union and are more than the simple majority as enumerated under Section 54 of the *Labour Relations Act*. No elections were held as submitted by the Respondent.
24. In the circumstances, I allow the prayer sought for recognition and direct the Respondents to forthwith recognize the Claimants Applicants as the union representative of the union employees. The Respondent will pay costs of this cause.

**RULING DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF MARCH, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of: -

Awino for Claimant – present

Gitenga for Respondent – present

Court Assistant - Fred

