



Kenya Concrete, Structural, Ceramics Tiles , Woodply and Interior Workers Union v Comply Industries; Kenya Building, Construction, Timber & Furniture Industries Employees Union (Interested Party) (Employment and Labour Relations Cause E558 of 2020) [2024] KEELRC 675 (KLR) (14 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 675 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E558 OF 2020**

MN NDUMA, J

MARCH 14, 2024

BETWEEN

KENYA CONCRETE, STRUCTURAL, CERAMICS TILES , WOODPLY AND INTERIOR WORKERS UNION CLAIMANT

AND

COMPLY INDUSTRIES RESPONDENT

AND

KENYA BUILDING, CONSTRUCTION, TIMBER & FURNITURE INDUSTRIES EMPLOYEES UNION INTERESTED PARTY

JUDGMENT

1. Serving before court is a statement of claim dated 21/10/2020 against the respondent seeking for orders:
 - i. Directing the respondent to continue deducting and remitting union dues to the specified bank account and as scheduled in the Legal Notice No. 5 of 2014.
 - ii. An order barring the respondent, its agent, servants from interfering with the membership of the claimant and on deductions and remittance of union dues as demanded for under the law.
2. The claim is supported by verifying affidavit of Dishon Angoya and a list of documents marked ‘1’ to ‘12’ in support of the claim.
3. The parties agreed to proceed on documentary evidence including the pleadings and written submissions.



4. The case by the claimant is that it had recruited 646 employees of the respondent as its members and the respondent had acknowledged their membership having received the check-off forms dated 8/5/2014.
5. That upon receipt of the list of members and the bank account of the claimant's union for remittance of union dues, the respondent has failed and/or neglected to effect the said subscriptions to the claimant from April 2019 to-date.
6. That on 3/6/2019, the claimant reported a dispute to the Ministry of Labour under section 62 of *Labour Relations Act*.
7. That the claimant had met the simple majority of all unionisable employees of the respondent in terms of section 54(1) of *Labour Relations Act*, 2007. That the respondent was obligated by law to deduct and remit union dues having received the check-off forms as per section 48(2) of the *Labour Relations Act*.
8. That Article 41(2) (c) of *the Constitution* of Kenya 2010 further obligates the respondent to recognize the union and to deduct and remit the union dues in addition to allowing the union to conduct its lawful activities at the enterprise.
9. That section 50(1) of *Labour Relations Act* obligates deducted funds to be remitted within 10 days. That Legal Notice No. 50 of 2014 directed the respondent to effect check-off forms duly served by deducting and remitting union dues.
10. That section 50(8) of *Labour Relations Act* provides that;
 - “(8) No employee shall:-
 - i. Fail to comply with an order or a notice issued under this part.
 - ii. Deduct any money and not pay it into the account designated in the notice issued by the Ministry or
 - iii. Pay money into an account other than the account designated in the notice issued by the ministry.

Response

11. The respondent in its statement of response and submissions states that the respondent is a member of the Timber Industries Employees Association (T.I.E.A) and that the association has recognized the interested party, Kenya Building, Construction, Timber and Furniture Employees Union as the sole representative of its unionisable employees and has over the years negotiated several collective bargaining agreements (CBAs) with the association regarding terms and conditions of employment of the employees.
12. That the alleged recruited employees by the claimant union consists of employees who long left the employment of the respondent and most of the signatures presented by the claimant union are forgeries.
13. That the respondent has been deducting and remitting union dues to the interested party who represents all the unionisable employees of the respondent.
14. That for the respondent to cease remitting the union dues to the interested party, the unionisable employees need to serve unequivocal notices of resignation from the interested party. In this case the employees have written letters to the respondent denouncing recruitment into the membership of the claimant.



15. That the claimant can only seek recognition from the respondent through the T.I.E.A. after recruiting a simple majority from among the members of the association. That the suit be dismissed for lack of merit.

Interested party's case

16. The interested party joined the suit and has adduced documentary evidence and submits that it is an employers association to which the respondent belong and has negotiated CBA, on behalf of its members including the unionisable employees of the respondent who the claimant union purports to have recruited. That the employees of the respondent purportedly recruited by the claimant have written letters denouncing ever joining the claimant. That the said employees have sworn affidavits denouncing the allegation that they signed any check-off forms joining the membership of the claimant union which affidavits are before court.

That the suit lack merit and it be dismissed.

Determination

17. The court has considered documentary evidence filed by all the parties and submissions and has delineated the following issues for determination:-
 - i. Whether the claimant union has met conditions to be recognized by the respondent and for deduction of the dues by the respondent.
 - ii. Whether the claimant union is entitled to the reliefs sought.
17. From the overwhelming evidence before court, the respondent is a member of the interested party and has over time concluded CBAs with the interested party regarding terms and conditions of employment of all its unionisable employees.
18. That the unionisable employees of the respondent have placed evidence before court affirming that they are duly represented by the interested party in the negotiations of terms and conditions of service with the respondent.
19. The said employees have placed affidavits before court denouncing any purported membership of the claimant's union. The CBAs concluded between the respondent and the interested party on behalf of the employees of the respondent have been placed before court.
20. The agreement between the interested party and the respondents regarding membership of the respondent in the association has also been placed before court.
21. In terms of section 107 and 108 of the *Evidence Act* Cap 80 Laws of Kenya the claimant bears the onus to prove its case on a balance of probability. The check-off forms placed by the claimant before court have been impugned not only by the respondent and the interested party but by the many unionisable employees the claimant union purports to have recruited. The employees have denounced on oath the signatures purported to have been appended by them in the said check-off forms.
22. The court finds that the claimant has failed to prove that it had recruited 646 unionisable employees of the respondent to warrant the respondent to deduct and remit union dues from the said employees.
23. This court has held in Petition No. 5 of 2013, Kenya Hotel and Allied Workers Union versus the Attorney General and others per Nduma and Onyango J. with Ndolo J dissenting, that a union that wishes to be granted recognition by an employee that is already a member of an employers' association such as the respondent has to fulfill the requirement of section 54(1) of *Labour Relations Act*, 2007



by recruiting a simple majority of all employees employed by the distinct members of the association and not one employer alone, to justify ouster of recognition agreement because the recognition is not between the association with one employer but the composite employers who comprise membership of the association. See also Nairobi Cause No. 1394 of 2014 Kenya Hotel and Allied Workers Union Hilton Nairobi in which the court similarly held.

24. In the present case, having found that the claimant did not prove on a balance of probability that it had recruited sufficient numbers in the membership of the interested party, let, alone, the employees of the respondent, the court finds that the suit by the claimant union lacks merit and is dismissed with each party to meet their own costs of the suit.

DATED AT NAIROBI THIS 14TH DAY OF MARCH 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Mwenesi for claimant

Mrs. Mwangi for respondent

Ms. Chege for interested party

Mr. Kemboi Court Assistant

