



Kenya Engineering Workers Union v Kenya Glass Workers Union & another (Cause E064 of 2021 & 45 & 761 of 2019 (Consolidated)) [2024] KEELRC 811 (KLR) (12 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 811 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E064 OF 2021 & 45 & 761 OF 2019 (CONSOLIDATED)**

**MA ONYANGO, J
APRIL 12, 2024**

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

KENYA GLASS WORKERS UNION 1ST RESPONDENT

HEBATULLAH BROTHERS 2ND RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* to represent employees in the engineering Sector.
2. The 1st Respondent is also a trade union registered under the *Labour Relations Act* to represent employees in the glass industry.
3. The 2nd Respondent is a limited liability company that deals in both glass and aluminium fabrication. It is evident from documents on record as filed by the Claimant that the 2nd Respondent has a sister company by the name General Aluminium.
4. According to the averments in the Memorandum of Claim, the 2nd Respondent has three departments namely: NCL with 49 unionisable employees (as at the time of filing suit) whose work is to fix metal frames; General Aluminium Department with 390 employees whose work is to fabricate the aluminium frames; and Glass Department with 10 employees whose work is to fix imported glass to the aluminium frames.
5. It is the Claimant's case that the 2nd Respondent's employees fall within its jurisdiction and area of representation.
6. The Claimant states that it has entered into two separate recognition agreements with the 2nd Respondent. The first one which dates back to 1983 was signed between the Claimant and General



Aluminium which at the time of filing this suit had 400 employees. The second Recognition Agreement is with Habatullah Brothers Limited (NCL Department) which at the time of filing suit had 49 unionisable employees.

7. The issue in dispute is revocation of recognition agreement between the Respondents and victimization of the Claimants members on grounds of trade union affiliation/activities.
8. It is the Claimant's case that it has negotiated several collective Bargaining Agreements (CBAs) with the 2nd Respondent. That the last CBA was at the time of filing the instant suit pending before this court in ELRC Cause No. 49 of 2019 from determination, the parties having disagreed during negotiations.
9. The Claimant avers that in 2012 the Claimants members unprocedurally moved to the 1st Respondent union which the Claimant respected due to freedom of association. It states that it continued to serve its embers under NCL Department.
10. It is the Claimant's averment that in September 2019, 390 of the 2nd Respondent's employees in General Aluminium Fabricators Department procedurally withdrew from the membership of the 1st Respondent through individual letters of resignation and rejoined the membership of the Claimant. That the 2nd Respondent duly affected deductions of Union dues in line with section 42(sic) of the *Labour Relations Act*.
11. The Claimant avers that the 1st Respondent moved to court in ELRC Cause No. 761 of 2019 and obtained orders stopping union dues deductions and remittance to the Claimant, alleging interference with her membership.
12. It is the Claimants averment that after the said orders were obtained by the 1st Respondent union the employees of the 2nd Respondent re-affirmed their desire to become members of the Claimant union by authorising two of their colleagues to swear an affidavit to affirm their position.
13. It is the Claimants case that the Respondents thereafter colluded and unprocedurally declared the Claimant's members redundant. Its claim was pending in court on the refusal by the 2nd Respondent to sign a duly negotiated CBA the Respondents colluded and signed a CBA with inferior terms in which employees were offered a measly 1% salary increment.
14. In the Memorandum of Claim dated 26th January 2021 the Claimant seeks the following prayers:
 - a. That, the Honourable Court be pleased and find the Respondents action of negotiating a CBA on behalf of the Claimant's members without authority and imposing the same to them to be in bad faith and declare it NULL and VOID.
 - b. That, the Honourable Court be pleased and issue an Order against the two Respondents herein by revoking the Recognition Agreement between the two Respondents herein.
 - c. That, the Honourable Court issue an Order against the 1st Respondent and her agents from acting on behalf of the Claimant herein.
 - d. That, costs of this suit be provided for by the 2nd Respondent to the Claimant.
 - e. That, any other Relief the Honourable Court may deem fit to grant
15. The 1st Respondent Union filed a Memorandum of Response dated 18th July 2022 in which it states that it has a valid recognition agreement with the 2nd Respondent dated 14th August 2012 giving it authority to recruit, organize, represent and educate members in the employment of the 2nd Respondent.



16. The 1st Respondent further states that it has a CBA in force with the 2nd Respondent. The CBA is dated 4th November, 2020 and is effective from 1st July 2020 to June 2022, a period of two years.
17. The 1st Respondent states that it negotiated the best CBA considering that the year 2021 was a Covid-19 period and most companies were adversely affected by the pandemic.
18. The 1st Respondent states that it moved the court in Cause No. 761 of 2019 on the issue of union representation and in its decision delivered on 19th February, 2021 the court determined that each union should maintain its members and the 2nd Respondent should continue deducting and remitting union dues to each union as per each unions check-off forms.
19. It is the 1st Respondent's averment that there was no collusion between it and the 2nd Respondent to declare the Claimant's members redundant unprocedurally.
20. It is further the averment of the 1st Respondent that the Claimant union's constitution does not authorize it to represent employees in the glass sector while the 1st Respondent's constitution at Rule 4 authorizes it to represent employees in glass industries.
21. It is further the averment of the 1st Respondent that Section 14(1)(e) of the *Labour Relations Act* requires that trade unions only represent employees in the sector in which its registered constitution permits it to represent.
22. It is the 1st Respondent's position that if the Claimant wishes to have the recognition agreement between the 1st and 2nd Respondents terminated it should follow the procedure stipulated in Section 54(5) of the *Labour Relations Act*.
23. The 1st Respondent prays that: -
 - i. That, the 1st respondent do pray to the Honorable court to adopt the decision or the judgment in cause No. 791 of 2019 and let the parties compete freely and democratically by organizing and recruiting members.
 - ii. That, the Honorable court be pleased to find that the claimant's claim lacks merit and dismisses the same with costs to the claimant.
 - iii. That, the Honorable court be pleased to issue any other relief it may deem fit to grant.
24. The 2nd Respondent did not participate in the proceedings. The suit was disposed of by way of written submissions. Both the Claimant and 1st Respondent by and large reiterated the averments in their pleadings in their submissions.

Analysis and Determination

25. During the hearing of this suit I called for and perused file Number 45 of 2019 and 761 of 2019 which the Claimant and 1st Respondent referred to at length.
26. Cause No. 45 of 2019 was filed by Kenya Engineering Workers Union as Claimant against Hebatullah Brothers Ltd (N.C.L. Dept) as Respondent. The suit related to negotiation of the CBA between the Claimant and Respondent's therein. The Claimant accused the Respondent of refusal to sign a duly negotiated CBA.
27. The suit was withdrawn by consent of the parties on 21st June, 2021 after the parties resolved the dispute and registered the CBA.



28. Cause No. 761 of 2019 was filed by Kenya Glass Workers Union against Kenya Engineering Workers Union as 1st Respondent and Hebatullah brothers Ltd as the 2nd Respondent. The Claimant in the suit accused the Respondents of colluding with the Federation of Kenya Employers (FKE) to edge it out of the 2nd Respondent.
29. In the Judgment delivered on 19th February, 2021 the Court observed:
- From the foregoing, it is clear that the Claimant has not proved that the 1st Respondent colluded with the FKE and the 2nd Respondent to recruit its members. It has therefore not persuaded the court that it is entitled to the orders sought in memorandum of claim. The result is that the Claim is dismissed and the orders granted on 12th November, 2019 discharged. The 2nd Respondent is directed to deduct and remit union dues in accordance with the check off forms received from each of the two unions.
30. It is evident from the two previous suits and the instant suit that both the Claimant and 1st Respondent herein have recognition agreements with the 2nd Respondent herein.
31. It is further evident that the employees of the 2nd Respondent have periodically moved from one of the two unions to the other and vice versa and that this has caused a lot of strife and industrial disharmony.
32. As I observed in the Judgment in Cause No. 761 of 2019, it was not a wise idea for the 2nd Respondent herein to enter into two separate recognition agreements with different unions as this is a recipe for industrial strife.
33. I further observed that employees were within their right as provided in section 4(1) of the [Labour Relations Act](#) to resign from one union and join membership of the other union. Further, that each of the two unions, having been recognized by the 2nd Respondent, must be content with the presence of and competition from the other union and ensure that it keeps as many of the employees in its membership as it can to stop them from defection to the other union.
34. Moving to the issues in dispute in the instant suit, the Claimant seeks orders revoking the recognition agreement between the 1st and 2nd Respondents and an injunction to stop the 1st Respondent union from negotiating for members of the Claimant.
35. In its submissions the Claimant has stated that the CBA that was the subject of Clause No. 45 of 2019 between the Claimant and 2nd Respondent has since been registered as CBA No. E256 OF 2021.
36. It is further stated in the Claimant's submissions that it has since recruited all the employees of the 2nd Respondent leaving the 1st Respondent with not even a single member.
37. It is evident from the said submissions that the issues raised in the Memorandum of Claim herein have since been settled. Indeed, the prayers in the submissions of the Claimant are a total departure from what it prayed for in the Memorandum of Claim.
38. In the submissions the Claimant prays that:
- a. The Honourable Court to find that the counter prayer lacks merit and dismiss the same.
 - b. The Honourable Court do issue against the two Respondents herein and or their agents from making any agency fee deductions from the Claimant members towards the 1st Respondent. (sic)



- c. The Honourable Court allows the Claimant's prayers as sought in the Memorandum of Claim.
39. From the foregoing, it is evident that the issues in this suit were similar to and were adequately addressed by this court's Judgment in Cause No. 761 of 2019 which involved all the three parties herein and which the Claimant and 1st Respondent have widely referred to.
40. It is therefore my finding that there is no other issue in this suit for determination by this court, the issues in dispute having been resolved. I therefore find that no orders are necessary.
41. These suit is accordingly marked as resolved.
42. Each party shall bear its costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 12TH DAY OF APRIL 2024.

MAUREEN ONYANGO

JUDGE

