



**Kenya Chemical Workers Union v Benco Investment Limited (Cause E773 of 2023) [2024] KEELRC 753 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 753 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E773 OF 2023  
L NDOLO, J  
APRIL 11, 2024**

**BETWEEN**  
**KENYA CHEMICAL WORKERS UNION ..... CLAIMANT**  
**AND**  
**BENCO INVESTMENT LIMITED ..... RESPONDENT**

**RULING**

1. This ruling flows from the Notice of Motion dated 18<sup>th</sup> September 2023, by which the Claimant seeks orders directing the Respondent to sign a Recognition Agreement and to implement deduction and remittance of trade union dues for 40 employees recruited by the Claimant Union.
2. The Motion is supported by an affidavit sworn by the Claimant’s National General Secretary, Peter Ouko Onyango and is premised on the following grounds:
  - a. That the Claimant is a labour organisation duly registered as a trade union to represent the interests of workers employed in chemical industries;
  - b. That the Claimant has recruited 40 employees of the Respondent and is seeking to sign a Recognition Agreement with the Respondent as well as deduction and remittance of union dues, which the Respondent has refused to effect;
  - c. That the hard-line stand by Respondent compelled the Claimant Union to report a dispute to the Cabinet Secretary for Labour on 18<sup>th</sup> May 2023;
  - d. That on 30<sup>th</sup> May 2023, Peter Muema was appointed as Conciliator in the dispute;
  - e. That the Conciliator convened three meetings on diverse dates, all of which the Respondent failed to attend, prompting the Conciliator to issue a certificate of an unresolved dispute;
  - f. That the Respondent will not suffer any prejudice if the orders sought are granted;



- g. That it is in the interest of justice that the orders sought be granted.
3. The Respondent's response is contained in a replying affidavit sworn by its Factory Manager, Kahindi Mungai, on 2<sup>nd</sup> October 2023.
  4. Mungai depones that the Respondent has never been served with any check-off forms.
  5. He adds that the Respondent had just learnt of recruitment of its employees into the Claimant's membership.
  6. Mungai claims that the Respondent is not aware of any conciliatory meetings convened to resolve the dispute.
  7. By way of admission, Mungai confirms that from the check-off forms filed by the Claimant, a number of the Respondent's employees are in fact members of the Union. He undertakes that upon confirmation of their signatures, the Respondent will deduct and remit union dues in favour of the Claimant.
  8. Regarding the issue of recognition, Mungai states that there is need for the Respondent to ascertain the number of employees who are members of the Union vis-a-vis the total number of the unionisable employees.
  9. This matter was first placed before me ex parte on 27<sup>th</sup> September 2023 and I directed the Claimant to serve the Respondent for inter partes hearing on 4<sup>th</sup> October 2023.
  10. On 4<sup>th</sup> October 2023, the parties recorded a consent in the following terms:

“By consent the Respondent to deduct and remit to the Claimant union dues with respect to the confirmed members as per check off forms submitted by the Claimant. Mention on 13.11.2023 for further directions.”
  11. Post the above consent, the matter came up for mention severally. At the mention of 31<sup>st</sup> January 2024, Counsel on record for the Respondent, Mr. Malinzi stated as follows:

“We confirm that the Union has simple majority and agreed that union dues for November and December 2023 would be paid. The reason why the Recognition Agreement has not been signed is that the Director is out of the country.”
  12. On 28<sup>th</sup> February 2024, Mr. Gwako for the Claimant Union confirmed that the Union had received the union dues but the Recognition Agreement had not been signed.
  13. In response, Mr. Malinzi stated as follows:

“The Respondent's Director has not yet returned to the country. He is the only one who can sign the Recognition Agreement. I do not know when he is coming back.”
  14. Reading from the replying affidavit sworn on behalf of the Respondent, coupled with the statements made from the Bar by Counsel on record for the Respondent, there is a clear and full admission of the Claimant's claim. Further, the portion of the claim relating to deduction and remittance of trade union dues has been satisfied, leaving only the claim for recognition outstanding.
  15. In the circumstances, the only order I will make is that the Respondent is directed to sign a Recognition Agreement with the Claimant within the next thirty (30) days from the date of this ruling.



16. Each party will bear their own costs.

17. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF APRIL 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Gwako (Union Representative) for the Claimant

Mr. Malinzi for the Respondent

