



**Public Transport Operators Union (PUTON) v Neno Self Help Group  
(Cause E919 of 2021) [2024] KEELRC 803 (KLR) (8 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 803 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E919 OF 2021**

**B ONGAYA, J**

**APRIL 8, 2024**

**BETWEEN**

**PUBLIC TRANSPORT OPERATORS UNION (PUTON) ..... CLAIMANT**

**AND**

**NENO SELF HELP GROUP ..... RESPONDENT**

**JUDGMENT**

1. The claimant union filed the statement of claim on 09.11.2021 alleging the respondent's refusal to pay employment benefits and salary underpayments of the respondent's former employee Simon Kaviro who was allegedly employed by the respondent in 1997 as a general clerk in charge of the Nairobi Booking Office. It was alleged and claimed for the grievant as follows:
  - a. The grievant worked for 23 years and applied for early retirement and the respondent accepted the early retirement effective 01.02.2021. By the letter, dated 05.03.2021 the respondent wrote to NSSF to process the grievant's pension benefits.
  - b. During the service, the respondent paid the grievant the salary below the minimum wage per wage orders for years 2010, 2011, 2012, 2013, 2015, 2017 and 2018 occasioning salary underpayments contrary to section 48(1) of the *Labour Institutions Act*, 2007. The respondent also failed to pay the grievant house allowance per section 31 of the *Employment Act*. He was not given annual leave per section 28 of the *Employment Act*, 2007. Unutilised leave days for 6 years 2015 to 2020 were denied plus payment of underpayments from 2010 to 2021 and house allowance for the period 2010 to 2021.
  - c. By the letter of 07.06.2021, the union claimed the dues and a dispute reported to the labour department failed to yield resolution of the dispute because the respondent failed to attend the conciliation proceedings.
2. The claimant prayed for judgment against the respondent for:



- a. Payment to the grievant of a sum of Kshs.1, 512, 141being underpayments, leave, and service pay.
  - b. Costs of the suit.
  - c. Interest on (a) and (b) above.
  - d. Issuance of a certificate of service per section 51 of the [Employment Act](#).
  - e. Any other relief the Honourable Court may deem just to grant.
3. Fenus Okonji, the claimant’s Secretary General, signed the statement of claim.
4. The respondent filed the notice of preliminary objection dated 18.11.2021 through Vusha, Onsembe & Mambiri Advocates. The respondent urged that the claimant does not have the requisite locus standi to institute the claim on its own behalf or on behalf of the grievant and it ought be struck out in the first instance. The claimant respondent to the preliminary objection as dated 22.11.2021. it was stated that Simon Kaviro, the grievant, joined the union privately in February 2018 and paid union dues to the union directly per section 52 of the [Labour Relations Act](#) so that the claimant had standing to institute the suit. It was urged that the claimant was entitled to join the union per Article 41 of [the Constitution](#) as read with sections 4(1), 48(2) and 52 of the [Labour Relations Act](#). Further that the claimant was entitled to sue per Article 22 and section 12(2) and 22 of the [Employment and Labour Relations Court Act](#).
5. The respondent also filed the statement of response to the statement of claim dated 18.11.2021. The respondent pleaded as follows:
- a. The claimant lacked standing to file the suit.,
  - b. Admitted that the respondent employed the grievant in 1997 but not as a general clerk but as stage attendant at the parking lot. The exhibited organization chart showed no position of a general clerk.
  - c. On 23.12.2020 the claimant wrote seeking to resign effective 01.01.2021.
  - d. The underpayments are baseless as are upon misguided assertion that the grievant worked as a clerk or general clerk, which was not true.
  - e. The pay was consolidated inclusive provision for reasonable housing per section 31 of the [Employment Act](#).
  - f. The grievant was a member of NSSF and service pay is not due.
  - g. The Court to dismiss the statement of claim with costs.
6. By the consent order of 21.11.2022, the parties agreed that the suit be determined based on the pleadings and documents on record. The Court has considered he pleadings, documents and submissions on record. The Court returns as follows:
- a. It is settled trite law that a person’s membership in a tarde union entitles the person to representation whereas, recognition of a union by an employer entitles the union to engage in collective bargaining for the employer’s unionisable staff. In the instant case, the claimant has not pleaded in the statement of claim that the grievant was its member and no evidence is on record to show that the grievant was a member of the union as alleged in the response to the preliminary objection. The preliminary objection and the respondent’s case that the claimant lacked standing is upheld and the suit liable to dismissal.



- b. The organogram on record shows that the respondent's establishment had no position of general clerk. On a balance of probability and in absence of due evidence, the Court finds that the alleged underpayments are not due as based on the position the grievant has not shown to have held.
- c. The claimant confirmed he was a member of NSSF and service pay is not due per section 35(6) of the *Employment Act*.
- d. There appears to have been no grievance about the headings of claims for payment at the resignation and the claims are unfounded as mere afterthought.
- e. For stated reasons the suit is liable to dismissal with costs.

7. In conclusion, the statement of claim is hereby dismissed with costs for the respondent.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 8<sup>TH</sup> APRIL 2024.

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

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