



**Kenya Union of Commercial Food and Allied Workers v Gauca Stationers Limited  
(Cause 37 of 2016) [2024] KEELRC 1619 (KLR) (24 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1619 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 37 OF 2016  
K OCHARO, J  
JUNE 24, 2024**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL FOOD AND ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**GAUCA STATIONERS LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant, a trade union has sued the Respondent herein contending that under its Constitution and Rules, it has the legal capacity to represent the latter’s unionsable employees. Further, despite recruiting a simple majority of the Respondent’s unionsable employees, it refused to enter into a recognition agreement with the Claimant. As a result, the Claimant sought in its Memorandum of Claim dated 16<sup>th</sup> January 201 thus;

“That the Court orders the Respondent;

- I. To recognise the Claimant as a properly constituted and representative body and sole labour union representing labour interests of their employees.
- II. To deduct and remit Trade Union dues from all unionsable employees who have signed the check-off forms.
- III. To engage the Claimant in Collective Bargaining within 30 days of signing the Recognition Agreement.
- IV. To meet the costs of this suit.



2. The Respondent resisted the Claimant's claim through A memorandum of Defence herein dated 12<sup>th</sup> May 2016 denying *inter alia* that the Claimant had recruited a simple majority of its Unionsable employees and that the Union is entitled to the orders sought.
3. On the 2<sup>nd</sup> February 2023, when the matter came up before this Court for directions, with the consent of both counsel for the Parties, the Court ordered that the matter proceed based on the pleadings, the witness statements [as their evidence in chief], the documents on record [as their documentary evidence], and written submissions. Pursuant to Rule 21 of this Court's Procedure Rules, the Court directed that the matter proceeds as per the parties' desire.

### **The Claimant's Case**

4. It was the Claimant's case that as of 23<sup>rd</sup> April 2015, it had recruited 13 out of a possible 18 unionsable employees of the Respondent. The unionsable employees acknowledged their membership by signing its Check-Off forms as proof of their membership. Further, the 18 unionsable employees had as then worked for the Respondent for a period ranging between 5 to 15 years.
5. The Claimant stated that on 14<sup>th</sup> January 2014, it had written to the Respondent informing it of the membership and sent under cover of the letter, two Draft Recognition Agreements, and check-off forms for their study. It proposed that execution Recognition Agreement be done on the 23<sup>rd</sup> of January 2014.
6. The Respondent did not respond to the Claimant's proposal and didn't allow the Claimant access to its offices. As a result, the Claimant was prompted to refer the matter to the Ministry of Labour, Social Security and Services under Section 62 of the [Labour Relations Act](#), 2007. The Ministry appointed a Conciliator, Mr. Kanyotu.
7. Despite convening several meetings, the Conciliator failed to secure a resolution to the dispute. Eventually, he released his findings and a Certificate of Conciliation. The Claimant accepted the Conciliator's recommendations as a basis for settlement of the issue, but the Respondent declined.
8. The Claimant further stated that upon receiving a copy of the Conciliator's report, the Respondent opted to frustrate the employees whose names appeared on the check-off, by adopting shifts of three [3] days each week and paying only for worked days on Saturday in place of the monthly salaries. It stopped making statutory deductions. These actions amounted to victimization on account of trade union membership.
9. The Respondent's action to refuse to recognize notwithstanding the employees' choice, was an infringement of their Constitutional right under Article 41 of the [Constitution](#), and the stipulations of [ILO Convention No. 87 and 98](#).

### **The Respondent's Case.**

10. It was the Respondent's case that the Claimant has no capacity and mandate under its Constitution to recruit the Respondent's employees into its membership, as the Respondent isn't a Tobacco Company.
11. The Respondent further contended that contrary to its assertion, the Claimant didn't recruit a majority of its employees to the extent of 72%. It could not enter into a recognition agreement, as the Claimant didn't meet the threshold under Section 54[1] of the [Labour Institutions Act](#), 2007.
12. The Respondent stated that the persons listed in the Claimant's Check-off forms dated 23<sup>rd</sup> April 2015 were not all its employees at the date of the execution of the form. The following weren't, Kennedy Ouma Otieno; Paul Kungulu Kavita; John G. Otieno; and Andronics. The fact that the list contained



names of people who were not its employees and that therefore a simple majority threshold hadn't been met, was brought to the attention of the Claimant through the Respondent's letter dated 5<sup>th</sup> February, 2014.

13. The Respondent contended that the Claimant registered a dispute with the Ministry of Labour, before preparing the Check-off list dated 15<sup>th</sup> May 2016. The conciliation didn't bore any fruits. The parties failed to agree.
14. Contrary to the Claimant's assertion, it didn't receive any Check-off list from the Claimant. This much it informed the Conciliator through its letter dated 22<sup>nd</sup> May 2014.
15. The Respondent stated further that as a sign of good faith, through the Federation of Kenya Employers, it invited the Claimant Union to a meeting to resolve the outstanding dispute. Still, the issue wasn't solved.
16. The Respondent stated, true, the Conciliator made recommendations, however, the same didn't address the issue as to whether the Claimant had the *locus standi* to recruit its membership from the Respondent's employees.
17. It is not in the sector where the Claimant is suited to recruit its membership from, and offer representation.
18. The Respondent contended that the suit herein by the Claimant was prematurely filed, it is frivolous, vexatious and bad in law.

### **Submissions**

19. I have carefully read the submissions by the parties. They are no different from those that were made for and against the Claimant's Notice of Motion Application dated 14<sup>th</sup> January 2016.

### **Determination and analysis**

20. I have carefully considered the Parties' pleadings, the affidavits that they filed in respect of the Notice of Motion mentioned above, and their submissions, and the following issues emerge for determination, thus;
  - I. Whether the Claimant is suited to recruit and represent the Respondent's employees, considering the Respondent's business sector.
  - II. Whether the Claimant did recruit the Respondent's unionsable employees, and if it did, whether it met the threshold set in Section 54 of the *Labour Relations Act*.
  - III. Whether the Claimant is entitled to the reliefs sought.
21. This Court notes that by her ruling dated 22<sup>nd</sup> June 2016, Justice Wasilwa rendered herself on the Notice of Motion hereinabove mentioned. Undoubtedly, Her Ladyship rendered herself substantially on the pivotal issues that emerge for determination in this matter and in a conclusive manner. It is imperative to state that none of the parties herein challenged the findings through any of those modes provided in law or at all.
22. On whether the Claimant had the Capacity to recruit into its membership and represent employees of the Respondent, the Judge held;

“Having found as above, the next issue is whether the Claimants are the correct union in this sector. The Respondents have submitted that the union in question is not the proper



one in this sector and they refer to page 16 of the Claimant’s Constitution which refers to membership and that the Respondent is not one of them.

16. Rule 5 on the Claimant’s constitution states that the union shall embrace all employees:

- I. Warehouses, merchandise, Import and Export business.
  - II. Flour, Coffee, and spice mills.
  - III. All Food Processing Industries.
  - IV. Banks, Insurance and Financial Institutions.
  - V. Supermarkets, Shops, Retail and Wholesale outlets, distribution and supply companies.
  - VI. Watchmen organizations
  - VII. Daily and mill industries.
  - VIII. Co-operative Societies.
  - IX. Statutory Boards.
  - X. Slaughter Houses and butcheries.
  - XI. Property management.
  - XII. Cooking oil refineries.
  - XIII. Water Conservation and Pipeline Corporation, water service regulatory boards.
  - b. Bottling and Brewing Section. Which shall embrace all employees engaged or employed in bottling, brewing, distilling of alcohol, beverages, bottling of soft drinks and drinking.
  - c. Laundry Cleaners and Dyers Sector. Which shall embrace employees engaged in dyeing, dry cleaning services and laundry industries.
- .....”

17. The Respondent has submitted that none of these areas fall within their domain and so the Claimant is not the right union for them.

18. The Claimant on their part submitted that selling and supplying of stationary i.e. retail, and wholesale is their domain and so is the right union.

19. Having considered this list, it is my finding that the area of shops, retail, and wholesale outlets would easily fall within the Claimant’s mandate.”

23. Undeniably, the issue of the threshold under Section 54 of the Act, was an issue in the Application, and Lady Justice Wasilwa rendered herself, thus;

“ 11. The Claimant/Applicants aver that they have complied with Section 54[1] above having recruited 72% of the unionsable employees.



12. The Respondent on their part deny that the Claimant has recruited the simple majority. According to the Claimant, the recruited 13 members as per Appendix JKM 2, these, they aver are out of a possible 18= $13/18=72\%$ .
  13. The Respondent on their part deny that the Claimant reached a simple majority as they have 21 unionsable employees and that 4 out of the 13 are no longer in their employment. Removing 4 out of 13 would leave 9 employees if that were true are recruited. However, this dispute was reported to a Conciliator who found that the Claimant had recruited 11 members.
  14. Despite the fact that the Respondent aver that they have 21 unionsable employees, they have not produced their list of employees and even if they truly 21 and not 18, 11 employees constitute more than 50% of the recruited employees and therefore fall within the threshold expected under Section 54[1] of the *Labour Relations Act*.”
24. As mentioned hereinabove, the Claimant sought against the Respondent *inter alia* that it be ordered to remit Trade Union dues from all unionsable employees who had signed the Checkoff form. In my view, though at an interlocutory stage, this issue was duly decided on. Justice Wasilwa held;
- “Having found as above, I find the Claimant’s Application has merit and order that the Respondent do forthwith commence deduction and remittance of Trade Union dues from employees who have already acknowledged union membership with the Claimant/ Applicant.”
25. I come to a clear view that though the findings by Justice Wasilwa were made at an interlocutory stage, they apparently addressed the vital questions in this matter conclusively. As a result, I cannot act as an appellate forum, reopen the findings, and re-interrogate them to render myself thereon. None of the parties appealed against the findings. They maintain. Upon the premise, I come to an inescapable conclusion that the Claimant’s case must succeed.
26. In the upshot, Judgement is hereby entered in favour of the Claimant in the following terms;
- I. The Respondent is directed to recognize the Claimant as a Trade Union with the Capacity and mandate to recruit its members from the Respondent’s employees and represent their interests.
  - II. The Respondent shall sign the Recognition Agreement with the Claimant within 30 days of the date of this Judgment.
  - III. The Respondent is to continue deducting and remitting Trade Union dues from employees who signed the check-off form.
  - IV. Each party is to bear its costs.

**READ, DELIVERED AND SIGNED THIS 24<sup>TH</sup> DAY OF JUNE, 2024.**

**OCHARO KEBIRA**

**JUDGE**

In the presence of:

Mr. Maunda for Claimant Union

Mr. Okech for Mr. Ouma for Respondent



**Order**

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

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**OCHARO KEBIRA**  
**JUDGE**

