



**Kenya Engineering Workers Union v Apex Steel Limited (Cause 639 of 2019) [2024] KEELRC 1443 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1443 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 639 OF 2019**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN  
KENYA ENGINEERING WORKERS UNION ..... CLAIMANT  
AND  
APEX STEEL LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This Claim was filed at the E&LRC Mombasa on 15<sup>th</sup> June 2017.
2. It was transferred to the Court in Nairobi, on 26<sup>th</sup> September 2019.
3. The dispute concerns recognition agreement, and trade union dues.
4. It was transferred upon the Court finding that most of check-off lists exhibited by the Claimant in pursuing recognition from the Respondent, were addressed to the Respondent's branch at Athi River, which is closer to the Court in Nairobi.
5. The dispute has been going on from the year 2013. The Claimant states in its Statement of Claim, that in June and July 2013, it recruited 547 Unionisable Employees of the Respondent.
6. It forwarded the check-off lists to the Respondent, requesting for deduction and remittance from the Respondent, of trade union dues, with regard to recruited members, pursuant to Section 48 of the [Labour Relations Act](#), 2007.
7. The Claimant forwarded a copy of recognition agreement on the same date, for execution by the Respondent.
8. The Respondent did not comply on either request.
9. The dispute was reported to the Labour Office Athi River, who in a conciliation report dated 26<sup>th</sup> February 2014, found that the Claimant Union had not recruited a simple majority to warrant



recognition. It was recommended that recognition is withheld until the, the Claimant recruits a simple majority, of the total Employees.

10. The Parties executed an agreement dated 14<sup>th</sup> October 2016, this time before the Labour Office Mombasa. It was agreed, among other things, that the Claimant continues to recruit members, and that the Respondent deducts and remits trade union dues, with respect to the recruited members.
11. The dispute was not resolved, and the Claimant approached the Court, praying for: -
  - a. The Respondent is ordered to comply with Section 48 of the *Labour Relations Act*, by deducting and remitting trade union dues.
  - b. The Respondent is ordered to sign recognition agreement within a specific period, to pave way for CBA negotiation.
  - c. The Respondent is ordered to pay 2% of the Claimant's members' gross salaries for the month of November 2016, plus compound interest at Court rate, as par the Parties' agreement signed on 13<sup>th</sup> October 2016.
  - d. Any other suitable order.
12. The Respondent filed its Statement of Response on 22<sup>nd</sup> August 2017. Its position is that it has 7 Branches- the Head Office at Nairobi, Mini Hardware Nairobi, Tube Mill Division Athi River, Mavoko, Ken Aluminium, Athi River, Mavoko, Niku Branch Gikomba, Nairobi, Rolling Mill Division at Athi River, Mavoko, and Apex Steel, Mombasa.
13. The Respondent concedes that the Claimant submitted check-off lists and demanded that the Respondent deducts and remits trade union dues, and executes recognition agreement. The Respondent declined the request, because the Claimant had not met the requirements of the *Labour Relations Act*, on both counts.
14. It is conceded that the dispute was referred to the Labour Office, and the conciliator made findings and recommendations, as pleaded by the Claimant.
15. There was no appeal by the Claimant, from the findings and recommendations of the conciliator.
16. The Claimant did not continue to recruit as advised by the conciliator, but on 22<sup>nd</sup> January 2016, the Claimant issued a letter to the Respondent, asking the Respondent to attend another conciliation meeting at the Mombasa Labour Office. The Claimant forwarded a list of 24 loaders who worked for the Respondent at Mombasa, who were alleged to have been recruited as the Claimant's new members.
17. In the interest of good industrial relations, the Parties agreed before the Labour Office, Mombasa, that the Claimant would continue to recruit members, and that the Respondent would deduct and remit trade union dues with regard to recruited members. Deduction and remittance was subject to the Claimant availing to the Respondent, a Ministerial Order, authorizing deduction and remittance in favour of the Claimant.
18. The Claimant did not avail the Ministerial Order. The Respondent carried out a redundancy exercise at its Mombasa facility, whereof 23 Employees left employment.
19. The Respondent states that the Claimant has not satisfied the requirements of the law, under Sections 48 and 54 to warrant the remedies sought.
20. The Claimant applied before the Court, on 8<sup>th</sup> December 2023, to have the Claim considered and determined solely, on the strength of documentation and submissions. The Respondent, stated that it



was ready to proceed through oral evidence, and had its witness before the Court, ready to testify. It was however agreed that the Court considers and determines the Claim, in accordance with the proposal made by the Claimant.

21. The Parties confirmed filing and exchange of their submissions at the last appearance before the Court, on 14<sup>th</sup> February 2024.
22. The issues are whether the Claimant has satisfied the requirements of Sections 48 and 54 of the [Labour Relations Act](#), to justify the prayers sought.

**The Court Finds: -**

23. The factual position does not appear to have changed much, since the Parties appeared before the conciliators, both at Mombasa and Athi River.
24. The Court allowed both Parties, in agreeing with the Claimant's proposal to proceed by way of documentation and submissions, the liberty to file and exchange any further affidavits. There was room for the Claimant to show that it recruited more members, post-conciliation findings, recommendations and agreement. There is no such evidence placed before the Court by the Claimant, that would establish that the position has shifted, in favour the Claimant.
25. There are no fresh check-off lists. There is still no order issued by the cabinet secretary, authorizing deduction and remittance of trade union dues, forwarded by the Claimant to the Respondent.
26. The Claimant applied to have the Claim proceed on the strength of documentation and submissions, but relies solely on the documents which had already been reviewed by different conciliators, and certain findings and recommendations made. The Claimant has not satisfied the recommendations of the conciliator, or the agreement made between the Parties before the conciliator.
27. Recognition disputes are resolved mathematically in part, and by demonstrating industrial relevance and suitability of the Claimant Union. Simple majority is about numbers. The Claimant has moved around the various Branches of the Respondent, in Mombasa, Nairobi and Athi River, but has not come up with clear numbers, on the total unionisable workforce at all the Respondent's Branches and the number of members recruited overall.
28. The piecemeal approach adopted by the Claimant on recruiting at different Branches, and instituting disputes at different Labour Offices, is not helpful in resolving the recognition dispute.
29. The Claimant ought to carry out recruitment in all the Branches, and have a clear view of the total number of Unionisable Employees, working for the Respondent. Whether a simple majority has been achieved, is a mathematical proposition. The Claimant must show how many members it has recruited, against known, eligible, payroll Employees of the Respondent. It is difficult for the Court, to assist the Claimant, relying on historical data, dating back to 2013. Although recruitment of members is a continuous exercise, representation of Employees by a Trade Union, must have a certain degree of currency. The names listed as members of the Claimant Union, and Employees of the Respondent, belong to persons who have not given any form of evidence before the Court. These could be the names of the living, the dead or the unborn. It must be shown at the very least, that the strength of the Union at the collective bargaining unit is current, and based largely, on active Employees. This is the essence of the principle that Trade Unions must recruit in continuity. If the Claimant Union recruited 24 Employees at Mombasa for instance, who have since left employment on redundancy, it is not logical to take these historical figures into account, in assessing whether the Claimant has established a simple majority. Labour is dynamic, with Employees coming in and out of the employment space. They join and exit union membership regularly. Historical figures are not of much utility, in establishing a simple



majority, and granting recognition. The terms and conditions of service intended to be negotiated after recognition, are current, not historical issues.

30. The Claimant has not shown that the position has shifted, from the time the conciliation reports were generated.
31. It shall continue recruiting, and searching for a Ministerial Order, to warrant the remedies sought, perhaps in another forum.

For now -

**It Is Ordered: -**

- a. The Claim is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

