



**Kenya Concrete Structural, Ceramic Tiles, Woodplys and Interior Design  
Workers Union v Cibien Engineering & Construction Company (Cause  
E805 of 2023) [2024] KEELRC 1973 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1973 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E805 OF 2023  
SC RUTTO, J  
JULY 26, 2024**

**BETWEEN**

**KENYA CONCRETE STRUCTURAL, CERAMIC TILES, WOODPLYS AND  
INTERIOR DESIGN WORKERS UNION ..... CLAIMANT**

**AND**

**CIBIEN ENGINEERING & CONSTRUCTION COMPANY ..... RESPONDENT**

**RULING**

1. By way of a Ruling delivered on 9<sup>th</sup> February 2024, this Court allowed the Claimant's Application dated 4<sup>th</sup> October 2023 in the following terms:
  - a. The Respondent do forthwith commence deductions and remittance to the Claimant/Applicant's gazetted bank account, dues from the employees who have duly signed Form S and acknowledged union membership to the Claimant/Applicant union.
  - b. Costs shall be in the cause.
2. It is subsequent to that Ruling that the Respondent/Applicant has filed the instant Application dated 26<sup>th</sup> March 2024, seeking an order of review.
3. The Application is premised on the grounds appearing on the face thereof and the Affidavit of Mohommed Anzar Zain, the Applicant's Chief Executive Officer. Grounds in support of the Motion are that there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the Respondent and or could not be produced by the Respondent at the time when the order was made.
4. That further, the employees whose names appear on the list marked as "2" on the bundle of exhibits have after the making of the Honourable Court's Ruling furnished the Respondent with their letters



- of resignation from the Claimant, which said letters were not in within the Respondent's knowledge and or possession at the time of making the impugned Ruling and Order.
5. That whereas a number of the said employees supplied the Respondent with copies of their resignation from the Claimant as early as January 2023 and the same was duly received and acknowledged, the same were inadvertently misplaced and the Respondent was unable to promptly access the same for the purposes of this instant litigation as at the time of this Honourable Court making the impugned Ruling and Order.
  6. That further, other employees supplied the Respondent with copies of their resignation letters upon the Respondent receiving the Ruling and seeking to make deductions on their monthly pay for the purposes of remitting the same to the Claimant union.
  7. According to the Applicant, the foregoing situation has placed it in a rather difficult situation trying on the one hand to fully comply with the Honourable Court's Order while on the other hand striving to uphold the employee's rights to join/leave the Union.
  8. In the Applicant's view, there is a mistake or error apparent on the face of the record in the Ruling and the Order which now presents the difficulty it finds itself in.
  9. That further, there is a need for the Court to make a clarification on the manner of effecting the Order of the 9<sup>th</sup> February 2024 without having to go against the employees' instructions and or resignation from the Claimant union.
  10. Mr. Mohommed Anzar Zain avers that he is aware of the penalty of varying or making deductions from the employees' wage/salary without their consent under Section 19(g) of the [Employment Act](#) and he is under immense pressure not to find himself having run afoul of the law by either breaching the employee's terms of engagement or by failing to comply with this Court's order or both hence the instant Application.
  11. The Respondent countered the Application through the Affidavit of its Secretary General, Mr. Dishon Angoya. It is Mr. Angoya's deposition that he is advised by his Counsel that the Ruling bears no ambiguity whatsoever requiring any clarification as suggested by the Applicant.
  12. That while the Applicant asserts that they were supplied with resignation letters by some employees after the Ruling sought to be reviewed; those members of the Union said to have resigned were forced to sign resignation letters from the union at the threat of termination of their employment; a fact confirmed by Affidavits of (7) seven Union members.
  13. Mr. Angoya further avers that earlier on 13<sup>th</sup> July 2023 (8) eight of the Claimant's members had written that they were being compelled to sign resignation letters and the said members while disclaiming having resigned voluntarily and they equally affirmed their membership in the union.
  14. He further deposes that (10) ten of the employees said to have resigned from the Union are not its members.
  15. Mr. Angoya further avers that the Claimant expressed dissatisfaction and concern in writing to the Respondent regarding the victimization and intimidation of workers after complaints from the said workers.
  16. In Mr. Angoya's view, the Applicant has not demonstrated any effort in complying with the Court orders but since the Ruling, has embarked on a calculated process of intimidating workers, gathering and obtaining illegal documents aimed at defeating the Ruling and is therefore undeserving of any discretion or leeway.



17. It is Mr. Angoya's contention that the Applicant has never at any point referred to lost resignation letters and according to him, the introduction of this element is not discovery of new and important matter which was not within the knowledge of the Applicant.

### Submissions

18. The Application was canvassed by way of written submissions. Both parties complied and I have considered their respective submissions.

### Analysis and Determination

19. Upon considering the Application, the grounds in support thereof, the Claimant's Replying Affidavit, as well as the rival submissions, to my mind, the singular issue falling for determination is whether the instant Application is merited thereby warranting review of the Ruling delivered by the Court on 9<sup>th</sup> February 2024.
20. Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016, is very explicit that the Court can only review its orders if the following grounds exist: -
- a. if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
  - b. on account of some mistake or error apparent on the face of the record;
  - c. if the judgment or ruling requires clarification; or
  - d. for any other sufficient reason.
21. As can be discerned from the record, the gist of the Respondent's Application is that there is discovery of new and important evidence which after the exercise of due diligence was not within the knowledge of the Applicant. According to the Applicant, a number of its employees resigned from the Claimant Union and that it received their resignations but inadvertently misplaced the same. The Applicant further avers that other employees resigned from the Claimant Union following the Ruling of the Court.
22. According to the Applicant, it has been placed in a difficult situation as it tries to comply with the Ruling of the Court while striving to uphold employee's rights to join or leave the Union under *the Constitution* and Section 4 of the *Labour Relations Act*. That further, there is need for the Court to make a clarification on the manner of effecting the Order of 9<sup>th</sup> February 2024.
23. The Applicant further avers that there is a mistake or error apparent on the face of the record in the Ruling.
24. In support of its assertions, the Applicant annexed to its Application letters of its employees who it asserts tendered their resignations from the Claimant Union. A perusal of the said letters reveals that the names of some of the Applicant's employees who tendered their resignations, appear in the list annexed to Form 'S' in support of the Claimant's Application dated 4<sup>th</sup> October 2023.
25. As this Court held in the Ruling of 23<sup>rd</sup> February 2024, *the Constitution* and the *Labour Relations Act* acknowledge and guarantee freedom of association, which includes the right of an employee to belong, or not belong to a trade union. Specifically, Article 41(2)(c) of *the Constitution* guarantees every worker the right to form, join or participate in the activities and programmes of a trade union.



26. No doubt, the right to join a trade union goes hand in hand with the right to leave a trade union. Section 4(1) (c) of the [Labour Relations Act](#) is unequivocal on this.
27. Therefore, what this means is that if any of the Applicant's employees exercised their right and opted out of the Claimant's union membership, the Applicant being the employer was duty-bound to respect that right. Be that as it may, I hasten to add that such exit from the Union ought to be voluntary and not coerced.
28. Opposing the Application, the Claimant avers that it had raised concerns with the Respondent regarding the issue of victimization and intimidation of workers.
29. In support of its assertions, the Claimant exhibited Supporting Affidavits ostensibly sworn by seven (7) of the Applicant's employees in which they aver that they were forced to resign from the Union and that the Applicant had failed to comply with their wishes to be members of the Union.
30. In its submissions, the Applicant posits that the said Affidavits are of dubious credibility and unreliable for the reason that the biometric attendance log-in with respect to the said employees alleged to have been in Nairobi to swear the Affidavits on 16<sup>th</sup> April 2024 shows that they reported to their workstation in Eldoret at 8:00 am.
31. As it is, the veracity of the assertions by both parties cannot be ascertained by the Court in view of the fact that its jurisdiction at this juncture is very limited.
32. Be that as it may, this Court reiterates that all workers have a constitutional and statutory right to belong, or not belong to a trade union.
33. Therefore, if at all the Claimant's members in this case, left the Union voluntarily, they were within their constitutional and statutory right to do so. However, where such exit was not voluntary, then the actions of the Applicant can at best be termed anti-union and ought to be condemned.
34. All in all, and in determining the Application at hand, the Court finds that there is no mistake or error apparent on the face of the record in the Ruling of 9<sup>th</sup> February 2024. Further, the evidence sought to be relied on by the Applicant at this stage in the form of employees' resignation letters has no effect on the said Ruling. I say so, for the reasons set out above that employees have the right to join or leave the union. In any event, union membership is not static. The numbers can rise or fall depending on various factors.
35. Finally, the Court reiterates that the Applicant is bound to comply with both [the Constitution](#) and the [Labour Relations Act](#) by effecting union dues of the employees who are valid members of the Union. That is sufficient to clarify any doubts in the mind of the Applicant.
36. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY 2024.**

**STELLA RUTTO**

**JUDGE**

In the presence of:

Mr. Mwenesi for the Claimant/Respondent

Mr. Agingu instructed by Mr. Olunya for the Applicant/Respondent

Millicent Kibet Court Assistant



## 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 had 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 *Civil 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.

**STELLA RUTTO**

**JUDGE**

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