



**Kenya Engineering Workers Union v Napro Industries Limited (Cause 1563 of 2018) [2024] KEELRC 2665 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2665 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1563 OF 2018  
DKN MARETE, J  
OCTOBER 30, 2024**

**BETWEEN**  
**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**  
**AND**  
**NAPRO INDUSTRIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by a Memorandum of Claim dated 26th November, 2018. The issue in dispute is;  
  
“Refusal by the Respondents to comply with Section 48 of the *Labour Relations Act*, 2007 by way of deducting and remittance of union dues” victimization of the Claimant members and unfair/unlawful outsourcing.
2. This matter is not disputed, or at all.
3. The claimant’s case is that she is a duly registered Trade Union with the meaning of the Labour Relation Act, 2007.
4. The Respondent’s business follows within the claimant’s union and jurisdiction. Here, the parties have a duly signed Recognition Agreement and also have negotiated various CBA’s with the latest being the one of 17th Mary, 2017.
5. The Claimant’s case comes out as follows;
  2. 2 That, the Respondent refused to renew the CBA which forced the Claimant to invoke Section 62 of the *Labour Relations Act*, 2007 by reporting the Trade Dispute between parties herein to the Labour Ministry.



- 2.3 That, the Respondent wrote to the Claimant herein with intention to terminate the parties Recognition Agreement without taking into account in Labour Relations Act 2007 by reporting the same to the National Labour Board.
- 2.4 That, the genesis of all this is based on the ground that the Respondent has outsourced most of the unionisable employees including those in core business and might outsource all of the unionisable employees.
- 2.9 That, the Honorable High Court in Petition No.22 of 2012 between the Wrigley Company (East Africa) Limited versus the Honourable Attorney General and three (3) others has upheld that an employer cannot be permitted to use outsourcing as a means to escape from meeting accrued contractual obligation to its employees and or transfer the services of its employees to an out sourcing agency without the express acceptance of each affected employee and in all each cases, the employer must settle all outstanding obligation to its employees before any outsourcing arrangement takes effect or outsourcing is unlawful if its effect is to introduce discrimination between employees doing equal work in an enterprise.
6. Cumulatively, it is the claimant's case that the Respondent continues to deny her employees the right to freely choose to belong to a trade union of their choice. She also continues to be in breach of Section 48 of the Labour Relation Act, 2007 and Article 41 of the constitution of Kenya, 2010 in that she continues to deny her forty-nine (49) workers their right to freedom of association.
7. She prays as follows;
  - 4.1 That, the Respondent be Ordered to continue complying with the mandatory provision of the law being Section 48 of the Relations Act, 2007 by way deducting and remittance of union dues.
  - 4.5 That, the out sourced employees continue to enjoy terms and conditions as per the Negotiated CBA's and or any further CBA's between parties herein.
  - 4.6 That, costs of this suit be met by the Respondent to the Claimant herein.
  - 4.7 That, any other relief of the Honourable Court may deem fit to grant.
8. This matter is not defended, or at all. The Respondent also lazily prosecuted their matter in court.
9. The issues for determination therefore are;
  1. Whether the Claimant has a case against the Respondent.
  2. Whether the Claimant is entitled to the relief sought.
  3. Who bears the costs of the case.
10. The 1st issue for determination is whether the Claimant has a case against the Respondent. The Claimant through and through presents a case of failure by the Respondent to comply with the law by deducting and remitting union dues from the Claimant's members.
11. The Respondent has also been accused of unfair labour practices by victimizing her workers and union members and also interfering and refusing to recognize with Recognition Agreement inter partes. No defence has been adduced by the Respondent in the circumstances. I therefore find a case for the Claimant and hold as such.



12. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is. Having won on a case of violation of her rights in law as a union, she becomes entitled to the relief sought.
13. I am therefore inclined to allow the claim and order relief as follows;
- i. The Respondent be and is hereby ordered to continue complying with the mandatory provision of the law being Section 48 of the Relations Act, 2007 by way deducting and remitting of union dues to the Claimant.
  - ii. That, the Respondent be is hereby ordered to allow the outsourced employees continue to enjoy terms and conditions as per the Negotiated CBA's and or any further CBA's between parties herein.
  - iii. That the Respondent be and is hereby ordered to treat the outsourced employees as union members subject to recruitment by the union.
  - iv. (ii) That each party shall bear their costs of this cause.

**DELIVERED, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF OCTOBER 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Araka for the Claimant Union.

Mr. Makare instructed by Khalwale & Company Advocates for the Respondent.

