



**Kenya Engineering Workers Union v M/S Empire Glass Industries Limited (Cause E029 of 2022) [2024] KEELRC 2734 (KLR) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2734 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E029 OF 2022  
MA ONYANGO, J  
NOVEMBER 7, 2024**

**BETWEEN**  
**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**  
**AND**  
**M/S EMPIRE GLASS INDUSTRIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union duly registered as such under the *Labour Relations Act* with mandate to represent employees in the engineering sector as more specifically set out in its registered Constitution.
2. The Respondent is a limited liability company registered under the *Companies Act* with its offices situated at Industrial Area Road A within Nairobi County.
3. It is the Claimant's averment that the employees of the Respondent are technicians/engineers engaged in the production of glass and are members of the Claimant.
4. The Claimant avers that it recruited 37 out of the Respondents 49 employees and forwarded the check-off forms (Form 'S') to the Respondent on five (5) different dates as follows:
  - i. On 12<sup>th</sup> March, 2021, 26 employees
  - ii. On 20<sup>th</sup> March, 2021, 4 employees
  - iii. On 27<sup>th</sup> July, 2021, 2 employees
  - iv. On 21<sup>st</sup> August, 2021, 2 employeestotal 37 employees
5. The Claimant avers that the said check-off forms were accompanied by the Gazette Notice authorizing deduction of union dues.



6. It is further the Claimant's averment that the Respondent declined to comply with section 48 of the Labour Relations Act by refusing to deduct and remit union dues from the salaries of the employees whose names appeared in the check-off forms compelling the Claimant to invoke section 62 of the Labour Relations Act by reporting a trade dispute to the Labour Ministry which was accepted under reference Number ML/LD/IR/13/35/2021 and Mr. Laurent Mulwa of Industrial Area Labour Office appointed to conciliate the parties.
7. The issue in dispute was framed as:
  - Refusal by the Respondent/employer to accord the Claimant/Union recognition agreement. To deduct and remit union dues and victimization of Claimant's members
8. it is the Claimant's averment that the Conciliator invited parties to several conciliation meetings but the parties could not agree prompting the Conciliator to issue the parties with a Certificate of Unresolved Dispute dated 15<sup>th</sup> December, 2021.
9. The Claimant avers that when it visited the Respondent on the issue of union dues on 12<sup>th</sup> January, 2022 it was shocked when the Respondent showed it a different Conciliation Report from the same Conciliator with findings and recommendations which although addressed to the Claimant, was never issued to the Claimant. The Claimant states that it protested against the Conciliation report and asked for its withdrawal by its letter to the Conciliator dated 13<sup>th</sup> January, 2022.
10. It is the Claimant's position that the issues raised in the Conciliation Report issued to the Respondent were resolved by this court in ELRC Cause No. 761 of 2019 between Kenya Glass Workers Union, Kenya Engineering Workers Union and Hebatullah Brothers Limited.
11. It is further the averment of the Claimant that in Mombasa ELRC Cause No. 393 of 2015: Amalgamated Union of Kenya Metal Workers versus Dock Workers Union and Associated Vehicle Assemblies Limited the Court held at paragraph 11 thereof that "The Courts have recently downplayed the concept of industrial trade unionism, especially in the hotel industry. They have emphasized the primacy of freedom of association and the freedom of contract."
12. Further, at paragraph 12, the Court stated: "As the Dock Workers Union has recruited a sizeable number of willing employees from the motor industry, it cannot be barred from enjoying recognition from this industry, on the mere ground that its constitution restricts its area of representation to port and marine sector. Demarcation in areas of activity has become blurred, under the constitution and recent Judgments of our Courts."
13. The Claimant avers that it has recognition agreements and collective bargaining agreements in the said sector due to the Judgment of the Court.
14. The Claimant prays for the following remedies:
  1. That, the Honourable Court do issue an Order against the Respondent herein to sign the Recognition Agreement within the shortest time frame possible.
  2. That, the Honourable Court do issue an Order against the Respondent and or her agents not to victimize the Claimant members on grounds of Trade Union activities and or affiliation.
  3. That, the Honourable Court do issue an Order against the Respondent to pay all the union dues arrears from her pocket from the time the Check-off forms (Form 'S') were served upon her being 2% of the unionisable employees wage bill.



15. The Memorandum of Claim was filed together with an application filed under certificate of Urgency in which the Claimant sought the following orders:
  1. That the application is misconceive and is an abuse of the court process.
  2. That the Claimant lacks locus standi to lodge the application and the Memorandum of Claim herein. In that the suit offends the express and unequivocal provisions of Section 54(1), (6), (7) and (8) of the [Labour Relations Act, 2007](#).
  3. That the Application has been filed under the wrong provisions of the law.
  4. That the application is hopelessly incompetent, fatally defective and inadmissible and the same ought to be dismissed forthwith, even suo moto.
16. Upon considering the application the court ordered that:
  1. That the Respondent to continue deduction of union dues in accordance with section 48 of the LR CT.
  2. That other matters in the suit to be mentioned on 12/5/2022.
17. In response the Respondent filed Grounds of Opposition dated 4<sup>th</sup> February, 2022, Replying Affidavit dated 10<sup>th</sup> February, 2022. There is no Memorandum of Response on record. The Replying affidavit however contains all relevant information and shall be deemed to be the response to the Claim.
18. In the Grounds of Opposition the Respondents raises the following grounds:
  1. That, this matter be heard ex-parte in the first instance and certified as urgent and heard on priority basis.
  2. That, the Honourable Court do issue an interim Order against the Respondent and or her agents from victimization of the Applicant members by way of redundancy, termination and or dismissal on account of Trade union activities/affiliation.
  3. That, the Honourable Court do issue an interim Order against the Respondent herein to effect deduction and remittance of union dues from all the members of the Applicant as per the check-off (Form "S") form filed in Court as Appendix AWAN 1 of the Memorandum of Claim with immediate effect.
  4. That, the Respondent to meet the costs of this Application.
  5. That, any other Relief the Honourable Court may deem fit to grant.
19. According to the replying affidavit of Kamal Harish Asodia sworn on 10<sup>th</sup> February 2022, the Respondent had 58 unionisable employees out of whom the Claimant had recruited only 27.
20. It was the averment of Mr. Asodia that the Claimant had not pleaded the number and identity of the staff in respect of whom union dues were to be deducted and remitted to the Claimant.
21. It was further the averment of Mr. Asodia that the Claimant had not satisfied the requirements to be recognized by the Respondent. that the check-off forms submitted by the Claimant were defective.
22. Mr. Asodia stated that the Respondent did not agree with the findings of the Conciliator as there was no evidence that the Claimant had attained the requirements for recognition.
23. Attached to the affidavit are 11 letters of withdrawal from union membership dated between 4th July and 21<sup>st</sup> December, 2021.



24. The suit was disposed of by way of written submissions.
25. In its submissions dated 27<sup>th</sup> September, 2022 the Claimant reiterates that it recruited 37 employees of the Respondent and submitted the check-off forms (Form "S") to the Respondent; that it met the requirements for recognition under section 54 of the *Labour Relations Act* and that the Respondent failed to deduct union dues or to sign the model recognition agreement forwarded to it by the Claimant.
26. The Claimant relies on the decisions in ELRC Cause No. 761 of 2019 between Kenya Glass Workers Union, the Claimant and Hebatulla Brothers; Mombasa ELRC Cause No. 393 of 2015 between Amalgamated Union of Kenya Metal Workers, Dock Workers Union and Associated Vehicle Assemblers Limited; Mombasa ELRC Cause No. 14 of 2020 between the Claimant and Alpha Logistics (EPZ) Limited; Nairobi ELRC Cause No. 759 of 2012 between Kenya Union of Entertainment and Music Industry and Bomas of Kenya; Nairobi Cause No. 158 of 2019 between the Claimant and Magnum and Nakuru ELRC Cause No. 19 of 2017 between the Claimant and Aluminum Kenya Limited.
27. For the Respondent it is submitted that the issues for determination are:
  - i. Whether all the 37 members were valid members for purposes of recognition under section 54 of the *Labour Relations Act*;
  - ii. Whether the Claimant has recruited as her members, a simple majority of the Respondent's unionisable workforce;
  - iii. Whether the reliefs sought in the Memorandum of Claim should issue.
28. On the 1<sup>st</sup> issue the Respondent submitted that the Claimant did not provide check-off forms pursuant to its letter dated 27<sup>th</sup> July 2021 raising suspicion whether the two employees listed therein were recruited. Further, that the check-off form of 21<sup>st</sup> August, 2021 shows a total number of 29 out of 58 employees signed the same. That it is not clear whether all the employees in the list were recruited by the Claimant as the list included managers and personnel in management who do not qualify for membership of a union.
29. On the 2<sup>nd</sup> issue the Respondent submitted that the Claimant has not recruited a simple majority as required by section 54(1) of the Act. It submitted that the Claimant admitted that as at 20<sup>th</sup> January, 2022 it had recruited 37 out of 49 unionisable employees yet it had in actual fact recruited only 29 unionisable employees as at that date.
30. The Respondent further submits that the Claimant ought to have attached appointment letters of the 29 employees it alleges to have recruited to aid the court in establishing whether such employees were unionisable. The Respondent relied on the case of *Amalgamated Union of Kenya Metal Workers v Ms Jaykay Mechanical Ltd* [2014] eKLR.
31. On whether the Claimant is entitled to the orders sought the Respondent submitted that the Claimant had not recruited 50+1 majority threshold for recognition and that the suit should be dismissed with costs to the Respondent.

### **Analysis and Determination**

32. I have considered the pleadings and evidence on record. I have further considered the submissions filed by the parties and the authorities cited. The issues arising for determination are whether the Claimant



recruited unionisable employees of the Respondent, whether the Claimant met the requirements for recognition and whether the Claimant is entitled to the orders sought.

33. It was the Claimant's case that it recruited 37 out of 49 employees of the Respondent while the Respondent avers that the Claimant only recruited 29 employees out of 58 employees.
34. The check-off forms (Form S) annexed to the Claimants bundle of documents have a total of 37 names as follows: -
  - i. on 12<sup>th</sup> March, 2021 - 26 employees
  - ii. on 20<sup>th</sup> March, 2021 - 4 employees
  - iii. on 27<sup>th</sup> July, 2021 - 2 employees
  - iv. on 21<sup>st</sup> August, 2021 - 3 employees
  - v. on 4<sup>th</sup> September, 2021 - 2 employeesTotal - 37 employees
35. it is noteworthy that one of the names, No. 26 on the check-off form for 12<sup>th</sup> March, 2021 did not append his signature, thus only 29 names are validly signed for.
36. The Respondent did not submit any list of the 58 employees in its employment to controvert the averment of the Claimant that the Respondent had 49 unionisable employees at the time it sought recognition. This is reinforced by the averment of the Respondent at paragraph 3 and 4 of the Replying affidavit of Kamal Harish Asodia to the effect that the total number of its employees was 58 and that the majority of the employees are managers and personnel in management and are therefore not unionisable. The Respondent did not state the number of its employees that are unionisable.
37. From the check-off forms filed by the Claimant, the ones relevant for the determination of this suit are those it had recruited at the time of seeking recognition which is as at 26<sup>th</sup> March when the Claimant sent a copy of the recognition agreement to the Respondent and asked for a meeting on 29<sup>th</sup> March for purposes of signing the same.
38. The check-off forms filed by the Claimant show that as at that date the Claimant had recruited 29 employees into its membership.
39. The Claimant submitted a register of the unionisable employees containing 49 names at page 32 of its documents which the Respondent did not contest.
40. Section 54 of the [Labour Relations Act](#) provides:
  54. Recognition of trade union by employer.
    - (1) An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.
    - (2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.



- (3) An employer, a group of employers or an employer's organization referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organization recognizes a trade union.
- (4) The Minister may, after consultation with the Board, publish a model recognition agreement.
- (5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.
- (6) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.
- (7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.
- (8) When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister

41. From the foregoing I find that by the time the Claimant sought recognition by the Respondent it had recruited 29 out of 49 employees of the Respondent.
42. The employees whom the Respondent alleged to have resigned did so long after the date when the Claimant sought recognition and therefore the resignations do not affect the right of the Claimant to be recognized by the Respondent as at the date the Claimant sought recognition.
43. Having found that the Claimant recruited 29 out of 49 employees of the Respondent, I find that it had a simple majority of employees of the Respondent as at the time it sought recognition. It was therefore entitled to recognition under section 54 of the Act.
44. I accordingly make the following orders:
  - a. That the Respondent do sign a recognition agreement with the Claimant within 30 days from the date of this judgment;
  - b. That the Respondent is restrained from victimizing employees on account of trade union activities and or affiliation;
  - c. That the Respondent commences and or continues deducting and remitting union dues from all employees who have signed check-off forms as provided in section 48 of the *Labour Relations Act*.
  - d. Each party shall bear its costs of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**MAUREEN ONYANGO**

**JUDGE**

