



Kenya Concrete, Structural, Ceramic Tiles, Wood Plys & Interior Design Workers Union v United Aryan EPZ Limited (Cause E184 of 2022) [2023] KEELRC 216 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 216 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E184 OF 2022
J RIKA, J
JANUARY 31, 2023

BETWEEN

KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOOD PLYS & INTERIOR DESIGN WORKERS UNION CLAIMANT

AND

UNITED ARYAN EPZ LIMITED RESPONDENT

RULING

1. This claim bears the same factual background, as ELRC cause number 320 of 2021.
2. Cause number 320 of 2021 was presented by Fred Nyandingisi & 38 others.
3. The respondent herein, was among 4 respondents in cause number 320 of 2021, all carrying on business at the export processing zones.
4. Cause number 320 of 2021 was presented by employees of the 4 respondents, who alleged to be acting in person, and who alleged to be representing 34 other employees, whose details in the claim were absent.
5. There were 3 trade unions mentioned in cause number 320 of 2021, which were said to represent the employees at some point.
6. The employees in either case, were originally members of the Tailors and Textiles Workers Union [tailors union], the interested party herein; they are said to have resigned en masse from the tailors union and joined Kenya National Union of Domestic Workers; and soon after, subscribed to the claimant union herein, Kenya Concrete, Structural, Ceramic Tiles, Wood Plys and Interior Design Workers Union [ceramic union].
7. Cause number 320 of 2021 was filed by the employees, but with the ceramic union lurking in the background.



8. In both claims, the claimants allege to have been victimized by their employer[s] on account of their association with the ceramic union.
9. In cause number 320 of 2021, the claimants sought *inter alia*, that the 1st respondent, which is the respondent herein, is ordered to release the salaries and terminal dues of laid off workers.
10. The main prayer in the current claim is that the 84 members of the claimant herein, are reinstated unconditionally to their occupations prior to termination/ redundancy.
11. In one claim, the employees seek to be paid salaries and terminal dues, while the claim filed with the direct participation of the ceramic union, seeks unconditional reinstatement of the same set of employees.
12. The respondent and the interested party have raised similar objection as raised in cause 320 of 2021.
13. They state that: ceramic union has no *locus standi* to represent employees in the textiles industry under its constitution; the registrar of trade unions has declined to register amendments to the ceramic union's constitution, which were aimed at extending its area of coverage to the textiles industry; the industry is represented by the tailors' union; the issues in the current claim are also raise in cause number 320 of 2021; and the current claim is alleged to be based on written authority given to one Rahab Chege by 84 grievants, while only 10 have executed the letter of authority.
14. The court has simultaneously made a ruling on the objection raised in cause number 320 of 2021, declining the claim.
15. For similar reasons, the preliminary objection herein is upheld and this claim, number E184 of 2022 declined.
16. For avoidance of doubt, the reasons are underscored below in a summarized form: -
 - a. The letter of authority issued to Rahab Njeri is not executed by all the 84 persons said to be the grievants, contrary to rule 9[2] of the [ELRC \[Procedure\] Rules, 2016](#).
 - b. Personal details of all the grievants are not disclosed.
 - c. Rahab Njeri whose contract is said to have been terminated during the subsistence on an order of the court, in cause 320 of 2021, restraining the respondent from victimizing her, left employment on termination, before the said claim was filed, and order issued.
 - d. The ceramic union sought and was denied change to its constitution by the registrar of trade unions, in representation of the textiles industry.
 - e. The respondent has a subsisting recognition agreement and collective bargaining with the tailors' union.
 - f. The claimant union has not obtained orders of its recognition, or de-recognition of the tailors' union in the textiles industry.
 - g. There are multiple actions commenced by the claimant or employees it represents, in court and at the ministry of labour, against the respondent and other employers at the EPZ, over the same subject matter.
17. Not all grievants, left employment in similar circumstance. It has been alleged that some left on redundancy; some had their contractual periods lapse without renewal; and some left on disciplinary grounds. Is the court to grant an orders of reinstatement, across the board, without hearing individual



employees on circumstances of their termination? The court finds the current claim is, like cause number 320 of 2021, an omnibus claim.

18. The court shall adopt the above grounds in rejecting the claim herein. It can be added that the EPZ industry requires industrial harmony, which is not best served by the kinds of activities trade unions, have chosen to indulge in recently. There is a recognized trade union in the industry. There are established collective bargaining structures. There is a recognition agreement between the respondent and the interested party, executed on May 13, 2008, and a CBA executed on July 29, 2019.
19. The recognition agreement confers the tailors' union the sole collective bargaining agency, and has a negotiation procedure. This includes how, individual grievances, collective claims and collective grievances are to be dealt with. The grievances include those that arise from breach, real or alleged, of existing terms of service. How shall the ceramic union deal with the collective claim, outside the structures governing such claims? Termination or redundancy of the 84 employees cannot be dealt with, without the application of the CBA negotiated and concluded between the respondent and the interested party, even if the ceramic union has recruited the 84 employees. The recognized mode of grievance and dispute settlement, is that contained in the recognition agreement in place between the respondent and the interested party.
20. With all due respect to the ceramic union, these accrued rights and obligations cannot be undone using the methods the ceramic union has adopted. In both files for instance, ceramic union has sought and obtained interim orders against the EPZ employers, and instead of prosecuting the interim applications, of the claims, has focused on threatening the employers with imprisonment, through contempt of court applications. The proper way for the ceramic union to gain a foothold in the EPZ, would be to initiate a proper claim for recognition. If it, or Kenya National Union of Domestic Workers, wish to dislodge the tailors' union from the textiles industry, they must do so within the acceptable channels of the law and industrial relations practice. The ceramic union would have to successfully conclude its legal challenge to the registrar of trade union's refusal, to allow amendment of its constitution to represent textiles industry, because without a clause in its constitution allowing it to represent the industry, the pursuit of recognition, in whatever form, is dead in the water.

It Is Ordered: -

- a. The preliminary objection is upheld.
- b. The claim is rejected with costs to be paid by the claimant, to the respondent and the interested party.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

JAMES RIKA
JUDGE

