



**Nyandingisi & 4 others v United Aryan EPZ Limited & 4 others (Cause E320 of 2021) [2023] KEELRC 168 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 168 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E320 OF 2021  
J RIKA, J  
JANUARY 31, 2023**

**BETWEEN**

**FRED NYANDINGISI ..... 1<sup>ST</sup> CLAIMANT  
VIOLET ALEYO-UA 6384 ..... 2<sup>ND</sup> CLAIMANT  
FESTUS GITONGA TL 3443 ..... 3<sup>RD</sup> CLAIMANT  
THOMAS MANYARA ..... 4<sup>TH</sup> CLAIMANT  
JUDITH NYAMBEKI AND 34 OTHERS SUING ON BEHALF OF ALL THE  
EMPLOYEES HEREIN ..... 5<sup>TH</sup> CLAIMANT**

**AND**

**UNITED ARYAN EPZ LIMITED ..... 1<sup>ST</sup> RESPONDENT  
AFRICA APPARELS EPZ LIMITED ..... 2<sup>ND</sup> RESPONDENT  
ROYAL GARMENTS INDUSTRIES EPZ LIMITED ..... 3<sup>RD</sup> RESPONDENT  
NEW WIDE APPAREL EPZ LIMITED ..... 4<sup>TH</sup> RESPONDENT  
KENYA TAYLORS AND TEXTILES WORKERS UNION ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This claim was filed on April 20, 2021.
2. It is indicated to have been filed by the 5 claimants and 34 Others, ‘on behalf of all the employees herein.’
3. The 1<sup>st</sup> claimant indicates that he has representative authority ‘as has been bestowed upon me by the workers in representing them, in the capacity of shop steward, and having been duly authorized by the said claimants and other workers to plead on their behalf..’



4. The claimants aver that they have been victimized by the respondents for opting out of the 5<sup>th</sup> respondent's membership. They are seeking orders that the respondents are permanently restrained from victimizing workers on the basis of their association with a trade union of their choice; the respondents are directed to acknowledge receipt of their resignation forms; the respondents are directed to refund trade union dues that may have been deducted and paid out to other trade unions; and the dismissal of employees by the respondents is declared un-procedural and the 1<sup>st</sup> respondent be directed to release the respective salaries of the laid-off workers.
5. On April 20, 2021, the court was moved by the claimants to grant them interim orders, and were granted orders, that the respondents are restrained from victimizing any members/ employees for engaging in lawful trade union activities. The application was to be served upon the respondents within 14 days, and hearing date for inter parte hearing would be taken at the registry.
6. There has been no hearing *inter parte*. Instead, the claimants filed an application for contempt of court, alleging that the respondents have disobeyed the orders of the court. They have prayed the court to cite Prankaj Bedi and Amit Bedi, directors of the 3<sup>rd</sup> respondent and chairman of the 1<sup>st</sup> respondent respectively. The respondents have on their part, raised preliminary objection, asking the court to dismiss the whole claim on the ground that the claimants have no capacity to represent employees; and there is no cause of action against some of the respondents. They have also filed grounds of opposition to the application for contempt of court.
7. It was agreed that the application and the preliminary objection are considered and determined by way of written submissions. The submissions were confirmed to have been filed and exchanged, at the last mention on October 12, 2022.

**The Court Finds: -**

8. The 1<sup>st</sup> claimant states that he represents other claimants in his role as a chief shop steward. The chief shop steward is not authorized by law, to file a representative claim, in this court. His role is not to file claims in court.
9. For the chief shop steward to bring a representative claim before this court, he must show that he is an authorised representative under section 2 of the [Labour Relations Act, 2014](#).
10. "Authorised representative," under this provision means, the General Secretary of a Trade Union, an employer of Chief Executive Officer of an employer, the secretary of a group of employers, the chief executive or association secretary of an employers' organisations; or any person appointed in writing, by an authorised representative, to perform the functions of an authorised representative.
11. The 1<sup>st</sup> claimant has not established that he presents the claim, in any of the above capacities.
12. Section 22 of the [Employment and Labour Relations Court Act](#), states that in any proceedings before the Court or a Subordinate E&LRC Court, a party may act in person or be represented by an Advocate, an Office-Bearer or Official of the party's Trade Union or Employers' Organisation and, if the party is a juristic person, by a Director or an Employee specially authorised for that purpose. Rule 5 of the E&LRC [Procedure] Rules, 2016 requires that a Statement of Claim, filed pursuant to the [Labour Relations Act](#), shall be signed by the Authorized Representative of the Party.
13. An Employee cannot purport to bring or prosecute a representative Claim, on behalf of other Employees, while the Employee and his Co-Claimants, allege to belong to a trade union. The Chief Shop Steward certainly has no such legal capacity.



14. Where Employees do not Claim union membership, and wish to file a representative Claim, Rule 9 of the E&LRC [Procedure] Rules 2016, allows one party, to institute the Claim on behalf of other Parties with similar cause of action, subject to certain conditions. The person filing the Claim, shall, in addition to the Statement of Claim, file a letter of authority signed by all other parties. The Statement of Claim shall be accompanied by a schedule of the names of the other Claimants, their address, descriptions and the details of wages due or particulars of any other breaches and relieves sought by each Claimant.
15. There is no record of written authority given to the 1<sup>st</sup> Claimant by the Co-Claimants named in the Statement of Claim. The details of 34 Others said to be Co-Claimants, are undisclosed. They have not been shown to have filed written authority, signed by each of them, authorizing the 1<sup>st</sup> Claimant to file this Claim.
16. The 2<sup>nd</sup> and 3<sup>rd</sup> Claimants have numerals added to their names. Violet Aleyoua has number 6384 added to her name. Festus Gitonga's name has added letters TL, and numbers 3443. What do these numbers and letters represent? These details are not made clear as required under the E&LRC [Procedure] Rules, 2016.
17. The 1<sup>st</sup> Claimant filed a Notice of Withdrawal of Instructions from Kenya National Union of Domestic Workers, which is undated. It is signed by the 1<sup>st</sup> Claimant, and suggests that the said Union, had been acting for the Claimants prior to withdrawal of instructions. Yet, all the Pleadings are signed by the 1<sup>st</sup> Claimant alleging to represent all the Claimants including 34 Claimants whose details are not known.
18. On September 29, 2021, a Notice of Change of Representation was filed, showing that the Claimants, suing through the 1<sup>st</sup> Claimant, had changed representation, instructing Dishon Angoya, who is identified as General Secretary, to represent the Claimant. The Notice is drawn in the name of Kenya Concrete, Structural, Ceramic Tiles, Wood Plys and Interior Design Workers Union. It is drawn and filed pursuant to Gazette Notice No. 8184 dated July 14, 2021. The Notice has nothing to do with representation of the Claimants, as it was issued by the Registrar of Trade Unions, calling for any objection to the application made Dishon Angoya's trade union, to amend his union's constitution, to enable it represent the textiles industry.
19. This Union is not a Party to the dispute, and it is not known, what its relationship with the Claimants and the Claim is. Trade Union Officials are not allowed to file Notices of Appointment of Change, as though they are Advocates, representing Claimants in Court, without establishing what link they have with those Claimants. Their representation and appearance before the Court, must be limited to their role as Authorised Representatives of their trade unions. It is improper for Dishon Angoya to file a Notice of Change of Representation, where his trade union is not named as a Party. In any event, the Notice does not indicate the change is from which trade union representative to Dishon Angoya.
20. On August 17, 2021, another set of 6 Employees claiming to have been ex-members of the Kenya National Union of Domestic Workers, filed an Application dated October 22, 2021, asking to be joined to the Claim. The 6, curiously, also stated that they were representing 34 Others. They similarly claimed to have been harassed upon resigning from their trade union. They also stated that they were encountered with irregular deduction of trade union dues. They had their own Advocate.
21. Even after appointing Dishon Angoya to represent them, the Claimants instructed Enonda & Associates Advocates, in a Notice of Appointment dated October 5, 2022 to represent them.
22. It thus becomes difficult to know who is representing the Claimants; whether this is a Claim presented by individual Employees or their trade union; which that trade union is; who is to sign their Pleadings



and prosecute the Claim; who is to be served on their behalf; and who is to take responsibility for the Claim. Their Pleadings are quite a jumble.

23. It is not clarified why 4 different companies in the EPZ, are joined as Respondents. Are they one Group of Companies? In the description of the Parties, in the Statement of Claim, all 4 Companies are shown to be separate entities, with different addresses of service. Paragraphs 1 and 2 in the part indicated as 'facts of the matters,' states that – "1. The Claimants herein are workers employed and or working in the service of the 1<sup>st</sup> Respondents, and 2. That being in the service of the 1<sup>st</sup> Respondent..." How many 1<sup>st</sup> Respondents are there, and if the Claimants are, Employees of the 1<sup>st</sup> Respondent, why are the other Respondents joined to the Claim?
24. Paragraph 5 of the Statement of Claim again mentions the 1<sup>st</sup> Respondent. Prayer 1, 2, 3 are directed against all Respondents, while prayer 4 seeks that the 1<sup>st</sup> Respondent is directed to pay salaries of laid-off workers.
25. The underlying dispute appears to be ignited by the trade union represented by Dishon Angoya, and the second trade union registered as Kenya National Union of Domestic Workers. They have sought to encroach on Textiles Industry at EPZ, an industry presently represented by the Kenya Tailors & Textiles Union [not Tailors as named in the Claim]. This is borne out in the Affidavit of the Textiles Union General Secretary, on record, sworn on June 11, 2021.
26. The trade union represented by Dishon Angoya applied to the Registrar of Trade Union, to be allowed to amend its constitution, to include representation of the textiles industry.
27. Objection was made by the Tailors and Textiles Workers Union and COTU-K. The Registrar declined amendment, arguing correctly that the particular amendment was aimed at creating another trade union, to encroach the area represented by the Tailors and Textiles Workers Union.
28. Dishon Angoya has challenged the decision by the Registrar, to deny amendment.
29. Tailors and Textiles Workers Union has recognition agreements with the Respondents and has concluded CBAs with the Respondents.
30. While Employees are free to move in and out of trade unions as they wish, they must be made aware that certain labour obligations at the workplace, are not affected by the sole reason, that Employees have resigned. Recognition Agreements remain in place, unless rescinded through orders of the Court, or by the National Labour Board. Existing Collective Agreements remain in place, as does the Tailors and Textiles Workers Union's right as the sole collective bargaining agent in the textile industry. Resigning Employees are bound to pay agency fees, so long as they continue to draw benefit, from the CBAs concluded between the Tailors and Textiles Workers Union, and their respective Employers. In joining other trade unions, Employees have a responsibility to find out if such trade unions, have or are likely to have, Recognition Agreement with their Employer, and whether their collective rights and interests at the workplace, can be advanced by their exiting their present trade union. Is the Union they opt for, by its constitution, allowed to represent their industry?
31. The Court finds the Claim herein to be defective.
32. The orders issued by the Court, were restraining orders, barring the Respondents from victimizing the Claimants. These were interim orders, which under the E&LC [Procedure] Rules, cannot exist in perpetuity without the express extension by the Court, or the consent of all the parties.
33. It was not shown that the Respondents disobeyed the orders. The 3<sup>rd</sup> Respondent issued show cause letter, and subsequently summarily dismissed an Employee named Robert Nyongesa. The grounds for



summary dismissal were not shown to relate to that Employee's legitimate trade union activities. He was said to have gone around the Respondent's factory, whistling loudly, and asking other Employees to join him and stop working. A second Employee named Dennis Imisio was involved in similar misconduct, and taken through similar disciplinary process.

34. Rahab Chege, said to have been Chief Shop Steward, according to the Supporting Affidavit of the 1<sup>st</sup> Claimant, was victimized through termination by way of redundancy, after she was elected Chief Shop Steward. Her letter of termination however, is dated April 14, 2021, before this Claim was filed and interim orders issued on April 20, 2021.
35. The interim orders did not limit the Respondents from managing their businesses, and exercising disciplinary control over rogue Employees. The orders only gave protection to Employees, not to be victimized for engaging in legitimate trade union activities. Walking about in the factory, whistling and calling on other Employees to withdraw their labour, fomenting industrial strife, does not on the face it, appear to be a legitimate trade union activity.
36. It is a wrong approach for an Employee to assume, that orders made by a Court against non-victimisation on the basis of associating with a trade union, deprive the Employer of disciplinary control, and exercise of managerial prerogatives.
37. If any Employee was dismissed on disciplinary grounds, and feels that dismissal was unfair, it is open to such an Employee to present a Claim before the Court for unfair termination.
38. The Court has not been presented with any evidence of any Employee, who was victimised on account of his association with any of the trade unions, claiming to represent the Respondents' Employees. No Employee was issued with a letter to show cause, or dismissed, on account of quitting, joining or in any other manner, associating with, any trade union.
39. There is no prayer in the Statement of Claim, directed at the Registrar of Trade Unions, and it is hard to justify her inclusion in the Claim.
40. It is also the view of the court that the claimants have not shown on what ground, the other respondents have been sued collectively. There is no cause of action shown against some of the other 4 respondents. The prayer asking the Court to declare dismissals un-procedural is imprecise. The names of the affected Employees are unknown. There are different causes of action, merged as one Claim, by various Claimants, some of whom are not identified. The Court is urged to order release of unspecified salaries. The amounts are unknown and the payees are unknown. There is a prayer for payment of terminal dues to Employees who were laid off. Again no details are given, and this redundancy claim appears separate from the other Claims. A trade dispute concerning redundancy of 5 Employees of the 1<sup>st</sup> Respondent, was submitted for conciliation to the Ministry of Labour, and Conciliation Report generated, dated October 28, 2021. Other trade disputes concerning lockout of certain Employees of the 3<sup>rd</sup> Respondent were presented in November 2021. Should the court be asked to deal with these matters, in this omnibus claim?
41. In the end, the court has come to the conclusion that the claim as a whole is improperly before it, it is unsustainable, and the application for contempt of court has no foundation.

**It Is Ordered: -**

- a. Preliminary objection by the respondents is upheld, and the claim and application for contempt of court declined.
- b. Costs to be paid to the respondents and the interested party, by the 5 claimants identified above.



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

**JAMES RIKA**

**JUDGE**

