



**Kenya Building Construction Timber & Furniture Employees Union v Aegis Construction Limited (Cause E704 of 2020) [2023] KEELRC 327 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 327 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E704 OF 2020  
AN MWAURE, J  
FEBRUARY 10, 2023**

**BETWEEN**  
**KENYA BUILDING CONSTRUCTION TIMBER & FURNITURE EMPLOYEES UNION ..... CLAIMANT**  
**AND**  
**AEGIS CONSTRUCTION LIMITED ..... RESPONDENT**

**RULING**

1. The respondent has raised a preliminary objection on a point of law of the memorandum of claim dated January 1, 2020 be struck out with costs on the basis the claimant lacks locus standi to commence, represent or maintain the cause on behalf of the grievants in relation to the alleged dispute.
2. The respondent state that there is no recognition and collective bargaining agreement between itself and the claimant union as required under article 54(3) of the *labour relations act* 2007 and applies that the cause be struck out in limine and or be dismissed with costs. The objection is grounded upon the various pleadings filed herein the record of proceedings and on such further grounds as may be adduced at the hearing hereof.

**Claimants submissions**

3. The claimants submissions are that the respondent claims the claimant cannot represent the grievant because there is no recognition and collective bargaining agreement between the claimant and the respondent. They cite the cause of *Communication Workers Union Vs Safaricom Ltd* (2014) eKLR:

“The question here with regard to locus standi is that the claimant union has no recognition with the respondent and even where such recognition is lacking there is no CBA between the parties to regulate terms and conditions of work. Without recognition by an employer, a trade union, even where registered as such, becomes a bystander waiting by the roadside



for instructions. Similar to a lawyer, though having a first class honours lacks a certificate of practice as an advocate of the high court of Kenya. Such a lawyer though well versed in law and well suited to give legal advice to various citizens lacks capacity to stand in court as an advocate representing a client.”

4. Section 54 of *labour relations Act* has been a subject of interpretation by different judges of ELRC. The court in case no. 507 of 2014 had this to say:

”Section 54 of the *labour relations act* requires an employer to grant recognition to a trade union, once a trade union has recruited a simple majority of the employers unionisable employees. The purpose of recognition is not to enable the trade union represent its members in court or other dispute resolution platform. Recognition is aimed at giving a trade union the sole collective bargaining agency. It is purposed on coercive interests and rights.”

5. Section 22 of Industrial court Act grants trade unions representative the rights to represent their members in court. The claimant therefore submits that a trade union only requires a recognition agreement for purposes of collective bargaining.
6. The claimant further cite the court of appeal case *Modern Soap Factory vs Kenya Shoe & Leather Workers Union* (2020) eKILR where learned Judges of Court of Appeal held:

“A recognition agreement is defined under Section 2 of the *Labour Relations Act* as an agreement in writing made between a trade union and an employer, group of employers or employers’ organisation regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers’ organisation. It is a bilateral agreement between a trade union and an employer on the basis of which the trade union engages with the employer regarding the terms and conditions of employment of its members. It is not the basis upon which the trade union represents its members in court. As the learned Judge correctly stated, the two roles are distinct.”

7. The claimant therefore prays that the preliminary objection be dismissed with costs.

### **Respondents submissions**

8. The respondent’s submissions are that for the test of locus standi to be met a party must have sufficient of interest to sustain its standing to sue in a court of law (*Law Society of Kenya vs Commissioner of Lands & Others* Case No 464 of 2000 KLR 706).
9. They submit that in the present case the claimant lacks locus standi since the claimant union has no collective bargaining agreement which has a recognition with the respondent. The parties have no agreement to regulate terms and conditions of work. They further say that without a recognition by an employer a trade union even where registered becomes a bystander waiting by the roadside for instructions.
10. The respondent submits that the claimant has not met conditions to be able to represent the respondent’s employees. He prays the preliminary objection hereto be allowed with costs.

### **Decision**

11. The issue for determination in this matter is whether the claimant has locus standi to represent the respondent’s employees. The court has considered the preliminary objection application and the rival submissions of the respective parties as well as the authorities.



12. The respondent contention is that the claimant has no locus standi to represent the respondents as there is no collective bargaining agreement between the claimant union and the respondent as required in section 54(3) of *labour relations act* 2007 which reads:

“An employer, a group of employers or an employer’s organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers’ organisation recognises a trade union.”

13. There is conflicting opinion about union representation as observed by varying employment and labour relations court’s judges. In the case of *Modern soap factory vs Kenya shoe and leather workers union* (2020) eKLR the court held:

“A recognition agreement is defined under section 2 of the *labour relations act* as an agreement in writing made between a trade union and an employer group of employers or employers organisation regulating the recognition of the trade union as the representatives of the interests of unionisable employees employed by the employer or by members of an employer’s organisation. It is a bilateral agreement between a trade union and an employer on the basis of which a trade union of which the trade union engages with the employer regarding the terms and conditions of employment of its members. It is not the basis upon which the trade union represents its members in court. As the learned judge correctly stated the two roles are distinct.

14. Section 22 as well as the *Industrial Court Act* grants trade union representations the right to represent their members in court. The right to representation is provided in the trade union constitution and as observed by the court in the case No 507 of 2014 Kenya Hotels And Allied Workers Union Vs Diani Sea Resort Carslake Nominee Ltd. It is an aspect of right to associate under the *constitution* of Kenya.

15. The trade union is mandated to represent its members to protect them from vulgarities of litigation and costs as observed in the case of *Kenya Shoe & leather Workers Union vs falcon Turners ltd* (2013) eKLR. The court rejected the respondent’s arguments on representation and appearances. It observed that a trade union has a right to represent its members in court and bring claims on the members behalf be it individual members or a collectivity of members in the trade unions names.

16. The court finds that the citings by the various courts including the Court of Appeal in the civil case No 37 of 2019 *Modern Soap Factory vs Kenya Shoe and Leather Workers union* as well as the statutory law provide clearly that a trade union has locus standi to represent its members. There is no proviso that there must be a recognition and collective bargaining agreement between the union and the employer for representation to happen.

17. Flowing from the above the court finds the preliminary objection application is devoid of merit and is dismissed with costs to the claimant.

18. The claimant is ordered to invite the respondent to take a hearing date before the Deputy Registrar within 14 days from today’s date so that the case is fixed for hearing without further delay.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 10TH DAY OF FEBRUARY 2023.**



**ANNA NGIBUINI MWAURE**

**JUDGE**

**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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

