



**Kenya Engineering Workers Union v M/S Landmark Holdings Limited
(Cause E491 of 2022) [2023] KEELRC 814 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 814 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E491 OF 2022
M MBARŪ, J
MARCH 27, 2023**

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
M/S LANDMARK HOLDINGS LIMITED RESPONDENT

RULING

1. The ruling herein relates to application dated July 4, 2022 filed by the claimant and seeking for orders that an order be issued against the respondent stopping the victimisation of the claimant's members by way of redundancy, termination and or dismissal from employment on account of trade union activities and that there be an order directing the respondent to remit trade union dues for all members of the claimant as per the check off forms and to remit the same to the claimant through the given bank account.
2. The claimant is also seeking for an order that the respondent be restrained from deducting and remitting trade union dues and remitting to any other trade union other than the claimant and that the respondent should not enter into a CBA with any other trade union other than the claimant.
3. The application is supported by the affidavit of Wycliffe Amakombo Nyamwata and on the grounds that the issue in dispute herein is that the claimant has recruited 73 out of a total 80 employees of the respondent as union members and sent the check off forms to the respondent but has refused to recognise or deduct and remit trade union dues to the claimant despite being served with banking details and gazette notice to this effect. the respondent has alleged that the claimant's members belong to another trade union and has proceeded to deduct and remit union dues to such other trade union contrary to section 48 of the [Labour Relations Act](#), 2007 (the LRA).



4. The claimant reported a dispute to the minister but the appointed conciliator is yet to convene a meeting and the claimant is seeking the protection of its members from victimisation through redundancy, termination or dismissal from employment for engaging in union activities.
5. In response, the respondent filed the replying affidavit of Stephen Kamau the human resource manager and who avers that the respondent received check off forms from the claimant indicating that some employees had joined its membership and upon going through the schedule of names discovered that some purported members were active members of another union, Kenya Concrete, Structural, Ceramic Tiles, Wood Ply and Interior Designs Workers Union (KCSCW&I). upon further enquiry, some of the alleged members refuted claims of having joined the claimant union and that their signatures had been forged. Upon discerning the check off forms, some alleged members had their names repeated on different forms raising further doubts as to the authenticity of the forms.
6. Mr Kamau also avers that to issue orders sought in their nature would create disharmony at the shop floor taking into account there is another union already recognised by the respondent representing majority of employees. it will prejudice the employees' rights to have their salaries subjected to a deduction without confirming their membership in the claimant union and the application made is premature, the claimant ought to have waited for the conciliator to address before moving the court and should be dismissed with costs.
7. Both parties filed written submissions. The claimant reiterated the application and the affidavit.
8. There is notice of preliminary objections filed by the respondent dated August 19, 2022 on the grounds that the proceedings herein are premature and contrary to the law and should be struck out with costs.
9. The claimant is seeking various orders including that the respondent be restrained from victimising, harassing and terminating the employment of its members who are the employees. In the supporting affidavit of Nyamwata, there is no matter or evidence of how such matters are demonstrated to show that its members have been victimised or have been issued with any redundancy notice or termination of employment. the general orders sought in this regard are without any material justification.
10. Where the claimant is keen to seek recognition by the respondent, such cannot be obtained through whatever means possible and by making unsubstantiated allegations.
11. In the replying affidavit of Mr Kamau for the respondent, he avers that there is another trade union representing the interests of employees in its employment, that is KCSCW&I and which trade union has been recognised by the respondent.
12. Where there exist rival trade unions, one already recognised and the other seeking to be recognised by the same employer, to proceed on affidavit evidence would not unearth the real issues in dispute. Whereas the claimant has the right to recruit members including those employed by the respondent, where such employees already belong to another trade union, the claimant must demonstrate that these employees have complied with the law in terms of the required notices pursuant to *Labour Relations Act*, 2007 (LRA). An employee who has resigned from his trade union must issue notice to the employer and based on which, the employer must notify the recognised trade union pursuant to section 48(8) of the LRA as held in *Kenya Union of Commercial Food and Allied Workers Union v London Distillers (K) Limited; Central Organisation of Trade Unions Kenya (Interested Party)* [2021] eKLR.
13. Where indeed the claimant has recruited over 73 employees out of a total number of 80 employees of the respondent, in view of the fact that there exists another trade union representing these employees, a full hearing would address all the issues between the parties and in the interim, the claimant can still



enjoy remittance of trade union dues directly from its members as required under section 52 of the LRA that;

52. Direct payment of trade union dues

Nothing in this part prevents a member of a trade union from paying any dues, levies, subscriptions or other payments authorised by the Constitution of the trade union directly to the trade union.

14. The claimant has admitted that indeed there is trade dispute before the minister and before a conciliator could be appointed, the claimant proceeded and filed suit. the court finds no matter of urgency to necessitate the instant suit before the same was addressed by the conciliator.
15. Accordingly, the application dated July 4, 2022 is hereby found in abuse of court process and is hereby dismissed. costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 27TH DAY OF MARCH, 2023.

M. MBARÚ JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: JAPHET MUTHAINE

..... **and**

