



**Kenya Engineering Workers Union v Nyanza Engineering and Hardware Ltd
(Cause E016 of 2022) [2023] KEELRC 891 (KLR) (19 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 891 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E016 OF 2022**

**S RADIDO, J
APRIL 19, 2023**

**BETWEEN
KENYA ENGINEERING WORKERS UNION APPELLANT
AND
NYANZA ENGINEERING AND HARDWARE LTD RESPONDENT**

JUDGMENT

1. The Kenya Engineering Workers Union (the Union) sued Nyanza Engineering & Hardware Ltd (the Respondent) alleging that the dismissal of Joseph Were Owiti and Daniel Odhiambo Ayieko (the Grievants) were unfair.
2. Despite being served with Notice of Summons and Memorandum of Claim and acknowledging the service on November 4, 2022, the Respondent did not enter appearance or file a Response.
3. The Court, therefore, directed on January 24, 2023 that the Cause proceeds to formal proof.
4. When the Cause was called for formal proof on February 20, 2023, Mr Araka for the Union informed the Court that he would not call any witness or lead evidence and that he would rely on the record and submissions to be filed.
5. The Union's submissions were not on record by the agreed timeline of March 17, 2023.
6. The Court has considered the pleadings and has regrettably come to the view that the Cause must fail.
7. It is not in dispute that the Union filed a Memorandum of Claim together with documents to be relied on.
8. The documents could only be introduced into and as evidence either through an affidavit or *vive-voce* testimony.



9. The documents were not introduced through an affidavit and the Grievants were not called to testify.
10. The failure to call the Grievants was not explained and the fact remains that the Union did not call evidence in support of the assertions in the Memorandum of Claim, which remained purely assertions. The claims were not proved.
11. The Cause is dismissed with no order on costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 19TH DAY OF APRIL 2023.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Union Mr Araka, Industrial Relations Officer

Respondent did not participate

Court Assistant Chrispo Aura

