



**Kenya Shipping Clearing & Warehouses Workers Union v Career Directions Limited
(Cause 612 of 2016) [2023] KEELRC 1664 (KLR) (29 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1664 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 612 OF 2016**

**M MBARÚ, J
JUNE 29, 2023**

BETWEEN

**KENYA SHIPPING CLEARING & WAREHOUSES WORKERS
UNION CLAIMANT**

AND

CAREER DIRECTIONS LIMITED RESPONDENT

JUDGMENT

1. Parties herein agreed to rely on the pleadings filed without call of evidence. the claimant highlighted the its case and both parties filed written submissions.
2. The claimant’s case is that the parties have a recognition agreement which has enabled the claimant to recruit members from employees in the employment of the respondent. the claimant served the respondent with the Order from the Minister so as to deduct and remit trade union dues from its members but the respondent refused to oblige the order.
3. In June 2016 the respondent decided to reduce 43 employees’ salaries without notice to the affected employees. the reduced salaries went below the contract rate without the written consent of the affected employees and despite the claimant reporting a dispute to the Minister, the respondent has failed to address and resulted into victimisation and intimidation of claimant’s members contrary to Section 17(11) of the *Employment Act*.
4. The claim is that the respondent should pay the employees in question their differences arrears with interests.

The orders sought are that;

- a. The respondent to reinstate the reduced amounts to its original position as the basic salary plus interest at court rate.



- b. The respondent to pay a penalty of one hundred thousand shillings to the applicant/claimant as a consequence of causing unnecessary dispute.
 - c. The respondent to pay the costs of this suit.
5. In response, the respondent denied the claims made on the grounds that out of the 3000 employees the claimant had only recruited 87 and consequently had not attained the requirement for recognition. All employees were paid according to their contracts and no salary was reduced as alleged by the claimant. The respondent offered contracts for a period of one year and subject to execution of these contract and based on the main client offering an extension, the employees had the option to decline the new offer. The initial contract lapsed and later contracts could not be construed as amended or revision of new contract.
6. The respondent also filed the statement of Rogers Wafula on the grounds that he is the legal officer of the respondent and in and Agreement to provide and manage outsourced labour between Bollore African Logistics Kenya limited, the respondent employed several employees on 30 May 2016 and seconded them to Bollore. On 8 July 2016 the respondent received letter from the claimant alleging that they had recruited 10 members who complained that their salaries had been reduced and later the respondent was served with a claim but the respondent filed Notice of Preliminary Objections since the claimant lacked *locus standi* to file the instant suit since there is no recognition between the parties nor a collective bargaining agreement (CBA).
7. The claimant forwarded to the claimant a draft recognition agreement for consideration and when the matter came up in court parties were directed to try and settle the claim amicably. An agreement was reached on a without prejudice basis to pay Ksh 63,010.50 be paid in full and final settlement of the dispute and a consent was filed in court but when the respond forwarded the consent to the claimant, they refused to sign it and proceeded to amend the claimant to include 43 grievant and alleged that the respondent has failed to pay reduced salaries for 2 years from June 2016 to June 2018.
8. Contrary to claim made by the claimant, the relationship between the parties was governed under an agreement signed by every employee and which agreement started on June 1, 2016 and lapsed on 31 May 2017 and were never renewed. The salary paid remained constant. At the time the contracts were issued, there was no recognition agreement with the claimant and there exists no legal relationship between the parties herein.
9. The memorandum of understanding between the claimant and the respondent was only signed on 20 April 2017 a month before the contracts lapsed. The memorandum of agreement does not meet the legal threshold of a recognition agreement under the *Labour Relations Act*.
10. In view of the notice by Bollore dated 18 April 2017 the respondent's contract to provide labour on various sites expired on 31 May 2017 and was not renewed. Variation of the employees contracts could not be varied unless sanctioned by the Bollore and this explains why these employees were taken up by Bollore after the contract with the respondent expired. The claims made are without basis and should be dismissed with costs.
11. Both parties attended court and agreed to file written submissions and to attend and highlight. Only the claimant complied and filed written submissions. The respondent did not attend or file any written submissions.
12. At the heart of the dispute herein is the challenge with regard the standing of the claimant to file suit herein on behalf of the grievants, the 43 employees of the respondent who have joined the membership of the claimant.



13. The initial claim filed on 18 August 2016 was on the grounds that the claimant is a registered trade union representing workers engaged in clearing and forwarding and warehouses sector while the respondent is a company. The claimant had recruited 10 employees of the respondent but the respondent had refused to recognise the claimant. The claim was also that the respondent had reduced the salaries of the grievants contrary to Section 17 of the [Employment Act](#) and such was unlawful and should be refunded.
14. On 13 August 2019 the claimant filed an Amended Claim on the grounds that there was recruitment of 43 employees of the respondent which justified recognition.
15. In response to the claim, the respondent conceded that it had over 3000 employees out of whom the claimant had recruited 87.
16. For purposes of recognition between the parties, the principles and threshold is in terms of Section 54 of the [Labour Relations Act, 2007](#). For a union to qualify for recognition by an employer, it must prove that it has recruited a simple majority of the employees in the service of the employer as held in [Kenya Union of Commercial, Food and Allied Workers v House Mart Limited](#) [2021] eKLR.
17. Recognition of a trade union by an employer is for the sole purpose of negotiating a collective agreement (CBA) in terms of Section 54 of the [Labour Relations Act, 2007](#):
 - "1. An employer, including an employee in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionizable employees."
 2. A group of employers, or an employers' organization, including an organisation of employers in the public sector, shall recognize a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionizable employees employed by the group of employers or the employers who are members of the employer's organization within a sector."
18. Recognition of a trade union by the employer is for a single reason. To allow the negotiations of a CBA.
19. A trade union which has recruited employees in the sector it operates is allowed to represent such employees in court in accordance with Section 22 of the [Employment and Labour Relations Court Act, 2011](#), in [Modern Soap Factor v Kenya Shoe and Leather workers union](#) (Civil Appeal No 37 of 2019) the Court of Appeal held that there is no reason why a registered union, whose constitution so empowers, should not have standing to institute a claim on behalf of its members and to represent its members in court. This position is reiterated in [Cello Thermoware Limited v Kenya Union of Commercial, Food and Allied Workers](#) (Civil Appeal 120 of 2019) [2022] KECA 54 (KLR).
20. Therefore, recognition is not necessary for the claimant to represent its members in these proceedings.
21. That resolved, the claimant's case is that the respondent has refused to recognise it and also reduced the salaries of its members contrary to the provisions of Section 17 of the Act.
22. The claimant through its officer, Mr Ongera submitted that its members have since left the service of the respondent. This was corroborated by the respondent through the statement of Mr Wafula that the contract with Bollore was not renewed and the employees who were on term contracts had their contracts lapse through effluxion of time.
23. Court orders should not issue in vain. Where the employment relationship with regard to claimant's members has since ceased. Such membership being 87 out of 3000 employees of the respondent, even



where the respondent were to recognise the claimant, which is not the case here, the legal threshold of Section 54 of the [Labour Relations Act, 2007](#) had not been achieved. That was way back in the year 2016 when this suit was filed. For one reason or the other, parties did not resolve the dispute and in the intervening period, the claimant has not amended its claim to assert any new developments from the number of 87 members out of the 3000 employees.

24. Without meeting the legal threshold for recognition, such order cannot issue.
25. With regard to the matter of reduced salaries, the claimant attached a list of its members with a designation, old pay and approved wage at branch level.
26. The claimant also attached some employment contracts. Example of Oloo Jacob, a messenger from June 1, 2016 to May 31, 2017 at a wage of Ksh 16,872.40 plus Ksh 2,530 house allowance all at ksh 19,403.26.
27. The contract of Tsuma Patrick a mechanic from June 1, 2016 to May 31, 2017 at a wage of ksh 22,402.50 plus house allowance of ksh 3,360.36 total being Ksh 25,762.88 per month.
28. The contract of Sila Caleb Mutuku a pump attendant from June 1, 2016 to May 31, 2017 at a wage of Ksh 14,935 plus ksh 2,240 gross being ksh 17,175.25 per month.
29. Each employee has a written contract with terms and conditions thereof.
30. The contracts for this phase, 1st June to May 31, 2017 is between the respondent and the grievants.
31. The claimant has attached payment statements for several other employees;
 1. Elijah Telis in May, 2016 he was paid Ksh 21,181.71;
 2. Katambo Welliamson in May, 2016 he was paid ksh 27,743.92; and
 3. Oloo Jacob in May 2016 he was paid Ksh 21,172.26.
 4. In May, 2016 Oloo Jacob was paid ksh.12,597.91.
 5. In May, 2016 Tsuma Patrick earned Ksh 25,762.90.
 6. In May, 2016 Sila Caleb Mutuku earned Ksh 17,175.25.
32. There is an obvious difference in salary paid from May, 2016 and June 1, 2016 to May 31, 2017.
33. Whereas the claimant has filed written contracts of employment for the period of 1st June to May 31, 2017 there are no written contracts for the period prior, May 2016. The wage paid is different. The wage paid from June 1, 2016 is higher than the previous month of May, 2016.
34. This fact is evident from the records filed by the claimant.
35. Upon the lapse of the one year contracts running from 1st June 2016 to May 31, 2017 there is no evidence of continued employment. The respondent's case that the claimant's members were absorbed by Bollore and its contract for labour provision was not renewed then stands correct. The claim that for 24 months the employees were underpaid is therefore without evidence.
36. An employer is allowed to issue an employee with a fixed term contract pursuant to Section 10(3) of the [Employment Act, 2007](#). Such a term contract is lawful and legitimate and confers rights to an employee to work from the start date until the end date. The agreed wage once paid, a claim of underpayment should not arise.



37. In this regard, the court finds no matter of any underpaid wages to order the respondent to pay as claimed. The claimant has not proved to have reached the threshold to justify an order of recognition and the case of underpayments is without justification.

38. Accordingly, the claim is hereby dismissed. Each party shall bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 29 DAY OF JUNE, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

