



Kenya Shipping Clearing Freight Logistics and Warehouses Workers Union v Vegpro (K) Limited – VP Group; Kenya Union of Commercial Food and Allied Workers (Interested Party) (Cause 1422 of 2018) [2023] KEELRC 1515 (KLR) (16 June 2023) (Judgment)

Neutral citation: [2023] KEELRC 1515 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1422 OF 2018**

B ONGAYA, J

JUNE 16, 2023

BETWEEN

**KENYA SHIPPING CLEARING FREIGHT LOGISTICS AND WAREHOUSES
WORKERS UNION CLAIMANT**

AND

VEGPRO (K) LIMITED – VP GROUP RESPONDENT

AND

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS INTERESTED PARTY**

JUDGMENT

1. The claimant union filed a memorandum of claim on 04.10.2018 through its General Secretary James O.Tongoi. The claimant alleges that the respondent company has failed to recognise it and moves the Court pursuant to sections 74(a), 54(1) (8) of the *Labour Relations Act*, 2007; Article 36 and 41 (2) (a) (b) and (c) of *the Constitution*; and section 12 of the *Employment and Labour Relations Court Act* and other enabling laws.
2. The claimant’s case is as follows. It is a duly registered trade union for the sector of Shipping Agencies, Clearing and Forwarding, Freight Logistics, Import and Export. The respondent is in warehousing enterprise. The claimant has recruited the requisite numbers of unionisable employees for recognition but the respondent has failed to recognise it. The claimant reported a dispute and a conciliator was appointed. On 02.08.2018 the conciliator Hellen Maneno issued a certificate of non-settlement (per section 69 of the *Labour Relations Act*) stating that the dispute remained unresolved due to the management’s failure to attend meetings to try and resolve the matter. The claimant alleges that it has fulfilled the requirements of section 54 of the Act on recruitment of simple majority of the respondent’s



unionisable employees and section 48 (2) of the Act on deduction and remission of union dues for such recruited members. The claimant prayed for judgment against the respondent for:

- (a) The respondent to accord the claimant union recognition agreement forthwith by signing it.
 - (b) The respondent to start deducting union dues basing on the forwarded check-off forms forwarded to the respondent on the following dates: 18.11.2016; 06.12.2016; 22.12.2016; 1.02.2017; 06.02.2017; 23.06.2017; 12.07.2017; 20.07.2017; 13.12.2017; 29.01.2018; 06.02.2018; 10.04.2018; 18.08.2018; 10.09.2018; and, 24.09.2018.
 - (c) The respondent to pay the costs of the suit.
3. The respondent filed on 23.10.2018 the notice of appointment of Okweh Achiando & Company Advocates to appear in the matter. The respondent also filed the memorandum of response dated 20.03.2023. The respondent pleaded as follows. It denied that it has received check-off forms from the claimant union and signed by its unionisable employees. The respondent recognises the provisions of Articles 41(2) (c) and 36 of *the Constitution* on the right of every person to form, join or participate in activities and programs of a trade union. The claimant is not the proper union to represent the respondent's employees because the respondent has already recognised the interested party in January 2012 and concluded numerous collective agreements the latest running from 01.06.2017 and registered by the Court on 08.11.2017 as RCA No. 338 of 2017. The respondent denied knowledge of a trade dispute allegedly reported by the claimant against it. There are previously filed suits namely ELRC 1415 of 2018 raising the same issues and ELRC 983 of 2017 which was dismissed for want of prosecution. The prayers made should therefore be declined.
 4. The interested party was enjoined and filed on 03.07.2019 the replying affidavit of Charles Egesa, the 2nd Deputy Secretary General. The interested party's case as per the affidavit is as follows. The interested party's constitution covers the respondent's sector of enterprise. The interested party has been recognised by the respondent and parties have concluded a CBAs, the latest being on 13.07.2017. The interested party's unionisable employees have exercised their freedom of association and joined the interested party and voluntarily signed check-off forms and are currently being deducted the union dues in favour of the interested party. The employees have never renounced their membership in the interested party. The Court should decline the claimant's case as it would be unfair for the employees to join two unions.
 5. The parties agreed the suit be determined on the basis of the material on record and written submissions. The Court has considered all the material on record and returns as follows.
 6. First, section 54 (1) of the *Labour Relations Act*, 2007 requires an employer to recognise a trade union for collective bargaining purposes if that trade union represents the simple majority of unionisable employees. In the instant case, the claimant alleges to have recruited the respondent's employees per the check-off forms exhibited. However, as urged for the respondent the forms appear to be for and by the Kenya Shipping, Clearing and Warehouses Workers Union while the claimant union is known as Kenya Shipping Clearing Freight Logistics and Warehouses Workers Union – essentially the two being different entities. The claimant has not offered an explanation by pleading or evidence about that glaring discrepancy. It appears to the Court that the respondent is entitled to deny that it had received the alleged check-off forms from the claimant especially in absence of evidence of service. Thus, in the Court's view it is difficult to find that the claimant had recruited a simple majority of the respondent's unionisable employees as required for the respondent to recognise it. The Court considers that even without the discrepancy in the union name on the forms and of the named claimant, there is nothing on record to tell the respondent's total number of unionisable employees and then therefore determine



the number that would qualify for the required simple majority, in the circumstances. The Court finds that the threshold for simple majority in section 54(1) of the Act has not therefore been established.

7. Second, on whether the claimant union is the correct sector union, it was pleaded that the claimant covers warehouses enterprise of the respondent. The respondent has admitted that descriptive part of the memorandum of claim. The exhibited constitution is for Kenya Shipping, Clearing and Warehouses Workers Union. The Court has found that that is not the named claimant trade union. But for that discrepancy, the exhibited constitution states membership to the union is for employees engaged in import, export, clearing and forwarding, warehouses and warehousing of goods for import and export. If the claimant were to be the same and one union as named in *the constitution* it would appear that the subsector of warehousing would be a shared sphere of recruitment within the predominance of the freedom to associate as opposed to the principle of one sector one union. The Court further finds that in view of the discrepancies in the named claimant and the trade union which appears to have recruited the employees in issue, it would not be just to order deduction of union dues as claimed and prayed for.
8. In view of the findings, the Court returns that the suit is liable to collapse on account recruitment of simple majority as required in the Act has not been established at all. The Court has considered the circumstances of the case and each party to bear own costs of the suit.

In conclusion the suit is hereby dismissed with orders that each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 16TH JUNE, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

