



**Kenya Plantation & Agricultural Workers Union v Mahee Flowers Ltd  
(Cause E013 of 2021) [2023] KEELRC 1369 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1369 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E013 OF 2021  
DN NDERITU, J  
JUNE 8, 2023**

**BETWEEN  
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT  
AND  
MAHEE FLOWERS LTD ..... RESPONDENT**

**RULING**

**I. Introduction**

1. In a memorandum of claim dated 29<sup>th</sup> March, 2021 filed in court on 9<sup>th</sup> April, 2021 the Claimant herein (a trade union) filed this claim for and on behalf of Irene Chelangat, a purported member of the union, praying for various remedies for the unfair and unlawful termination of the said grievant by the Respondent. However, there is no evidence whatsoever on record that the said grievant is a member of the said union.
2. The cause is defended and the Respondent is represented by Miss Wachira, instructed by Wachira Wanjiru & Company Advocates.
3. When the matter came up in court for taking a hearing date on 9<sup>th</sup> February, 2022, Mr. Mbakhila appeared for the Claimant. He is an officer of the union duly authorized by the union to appear for it in court matters. Since there were other matters pending in court where this court had sought for the parties to address the issue on the extent to which a union official or officer may participate in court proceedings, suo motto, the court asked the said officer of the union and counsel for the Respondent to address the court on the same.
4. Mr. Mbakhila filed his written submissions on 8<sup>th</sup> September, 2022, accompanied with a replying affidavit (*sic*) sworn by himself on 7<sup>th</sup> September, 2022. The court notes that the submissions filed are not signed by the said officer though dated 7<sup>th</sup> September, 2022.



5. Counsel for the Respondent did not file any written submissions on the issue but stated that she agrees with the submissions filed by the officer of the union as aforesaid.
6. The issue that this court directed to be addressed is whether officials or officers of a union have the same rights and privileges enjoyed by duly admitted and licensed advocates when such union representatives appear in court for and on behalf of the unions. This issue arises, of course, where such officials or officers are not duly qualified advocates as provided for in the *Advocates Act*.
7. It is in the foregoing background that this court is rendering this ruling. This court apologizes for the delay in delivery of this ruling which has been caused by bad health on the part of the judge and pressure of work.

## II. Issues for Determination

8. The issue at hand is for this court to state the law on the extent to which officials, officers, or representatives of a union, who are not duly qualified advocates, may appear in court and represent the union or a member or members thereof.
9. There are some rather obviously related aspects and issues that cannot be contested or argued. A union has a right to represent its members in various ways including collective bargaining, representation in court, and generally agitating and advocating for the rights and better terms and conditions of work for their members.
10. Section 22 of the *Employment and Labour Relations Court Act* provides as follows –
  22. Representation before the Court.

In any proceedings before the Court or a subordinate Employment and Labour Relations Court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee specially authorised for that purpose.

11. As stated in the foregoing part of this ruling, no evidence has been filed to confirm that indeed the grievant is a member of the Claimant. While that is an issue that shall certainly be addressed in the course of the hearing, it is important that pleadings filed by either party be clear and concise for avoidance of waste of time in seeking adjournments or leave to file or make amendments to the pleadings or to file further documents.
12. Be that as it may, every person has a constitutional right to file and prosecute a cause in any court of competent jurisdiction acting in person, through an advocate, or a recognized agent. The law cited above recognizes a trade union or an employer's organization as lawful avenues through which a member(s) thereof may approach a court and this court has absolutely no argument with that as that is the law.
13. However, juridical persons, and unions and other legal persons are such, can only act through human or mortal beings. That is why the above law grants officers and officials of a union the avenue to represent such unions and members thereof in court. Just like an individual who has filed a cause in court has a right to appear in court and prosecute his or her cause, a union has a right to send an official or an officer thereof to appear in court where such a union is party to proceedings.
14. The gist of the issue that this court asked the parties to address is this - What then can such officer or official of a union do or not do when he or she appears in court to represent the union or a grievant who



- is a member of such union? This court has already stated that such officers or officials have the same rights as individuals who appear in person in their matters. They can prepare, sign, and file pleadings, address the court, testify, and even cross-examine witnesses. That is a given.
15. What this court has stated in the past, and I still hold that view, is that unless and until such officers or officials of a union are duly qualified advocates, they cannot and should not “practice” law in our courts. One distinguishing feature is that they cannot lead witnesses in their evidence and cannot earn fees for legal services. They have to sit back and let the witness testify, as individuals acting in person would do, but they have a right to cross-examine witnesses, just as persons acting in person should do.
  16. The *Advocates Act* is very clear on who qualifies to practice law and how. If the law intended that any person can practice law and enjoy the rights and privileges enjoyed by duly qualified advocates, nothing would have been easier than for the law to expressly state so.
  17. This court has in the past decried the defects and deficiencies in most of the pleadings filed in court by officers and officials of unions who are not qualified advocates. In this particular matter this court has already pointed out two very serious omissions even before the matter has taken off for hearing. One, there is no evidence on record that the alleged grievant is a member of the Claimant union and two, the submissions filed by the officer of the union in this matter are not signed as required by the law and procedure.
  18. While the unions have a right to send their officials and officers to appear in court, it is important to note that every game has its rules that are best understood by those who have trained and practised for that game.
  19. This court is fully aware and alive to the sentiments of the learned judges in *Everlyne Adhiambo Okonga v Maasai Bars & Restaurants Limited* (2021) eKLR, *Kenya Shoe & Leather Workers Union v Falcon Tanners Ltd* (2012) eKLR, and *Modern Soap Factory v Kenya Shoe & Leather Workers Union* (2019) eKLR. Those decisions did not address the specific issue raised by this court for consideration in this cause.
  20. There is no doubt or argument that a duly authorized officer or official of a union can sign pleadings for and on behalf of a union which in turn is representing a grievant. That is not the issue that this court wanted addressed. The issue is as stated and explained above.
  21. For all the foregoing reasons, this court directs that the matter shall proceed for hearing such that any objection to any part played by the officer or official of the union during the trial shall be addressed as and when such objection is raised.
  22. *Suo motto*, this court notes that the pleaded gross monthly salary of the grievant as at the time of termination was Kshs.11,341/= which is within the limit of Kshs.80,000/= for the jurisdiction of the magistrate’s courts. As clarified by the by the Chief Justice in Legal Notice No. 5476 of 28<sup>th</sup> April, 2023 causes such as this one should be heard and disposed of in the lower courts of competent jurisdiction. For this reason, this matter is hereby transferred to the Nakuru Chief Magistrate’s Court for allocation, hearing, and disposal.
  23. However, as has been urged in numerous other causes and occasions, the Claimant is urged and encouraged to engage the services of qualified advocates in prosecuting matters in court as any striking out or dismissal of a cause or an application, attributable to lack of legal knowledge or competence on the part of the officer or official of the union appearing, greatly prejudices the very members that the union purports to represent.

**DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 8<sup>TH</sup> DAY OF JUNE, 2023.**



.....  
**DAVID NDERITU**  
**JUDGE**

