



Kenya Engineering Workers Union v Rhodum Steel Limited (Cause E015 of 2023) [2023] KEELRC 1835 (KLR) (31 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1835 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E015 OF 2023
BOM MANANI, J
JULY 31, 2023**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
RHODUM STEEL LIMITED RESPONDENT**

RULING

1. The dispute before me has been triggered by the quest by the Claimant to have the Respondent deduct union dues from employees of the latter and remit them to the Claimant. This quest allegedly affects only those employees who have signed up to be members of the Claimant.
2. The Claimant states that it has recruited approximately 41 of the Respondent's unionizable employees. That the employees have given their authority to the Respondent to collect union dues from them through monthly deductions from their salaries. The Claimant has delivered to the Respondent the schedule of the employees allegedly affected by the process together with their alleged signatures permitting the aforesaid deductions.
3. The Respondent has contested the authenticity of the names and signatures submitted to it. According to the Respondent, the list of names of the employees supplied by the Claimant was curiously prepared under one hand. Further, several signatures against the said employees' names do not match the signatures of the employees from an alleged database that is kept by the Respondent. The Respondent also argues that some of the employees whose names appear on the list have denied authorizing the Claimant to include them in the impugned list whilst others have since left employment. In a nutshell, the Respondent suggests that the schedule is a fraud.

The Conciliation Process

4. From the record, the parties were unable to amicably resolve the matter. As a result, a dispute was reported to the Ministry of Labour and Social Protection and a conciliator appointed to resolve it.



5. According to the Claimant, the first conciliator abandoned the process without rendering his recommendation. This led to the Ministry appointing two other individuals to undertake the conciliation process. It is the Claimant's case that the two, Helen Maneno and Christine Otieno, have failed to act on the matter. And hence the current court action.
6. On its part, the Respondent states that after the dispute was reported to the Ministry of Labour and Social Protection and a conciliator appointed, she prepared and submitted her report in which she cast aspersions on the authenticity of the membership recruitment exercise. According to the Respondent, the conciliator's report recommended that the Claimant restarts the process by collecting employee signatures a fresh.

Analysis

7. I have considered the matters in dispute. Whereas it is true that the Claimant is entitled to receive union dues from employees who are its members, this right only crystallizes when there is no dispute regarding the correctness of the information on the employees to be affected by the deductions. Where there is disagreement on this critical matter, I do not think that it is prudent for the court to overlook the dispute and order that the deductions be undertaken nevertheless.
8. I make this observation fully cognizant of the fact that an employee's salary is a protected entitlement (*Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR). The employer has no right to make any deduction from an employee's salary that is not sanctioned by the employee, the law or a court order. Therefore, if the Respondent were to make deductions to the salary of the affected employees without first verifying that the said employees have consented to the exercise, this will be in breach of the law (see Part IV of the Employment Act).
9. The Claimant has argued that the employees have authorized the deductions. However, this fact is contested by the Respondent. Further and contrary to the assertions by the Claimant, there is a report by the conciliator casting doubts on the authenticity of the names and signatures on the schedule that the Claimant relies on to make its demand for the union dues.
10. In my view, once a question arose about the authenticity of the signatures of the affected employees, the burden lay with the Claimant to establish that the list it had procured and issued to the Respondent was genuine. This could, for example, have been done by the Claimant procuring affidavits from the affected employees to confirm that the signatures on the list were genuine. Unfortunately, the Claimant has failed to undertake this exercise.
11. The Claimant has invited the court to disregard the conciliator's report because it does not meet the threshold set under section 68 of the *Labour Relations Act*. A perusal of the report demonstrates that it is not a settlement which requires the signatures of the disputants in terms of section 68 of the *Labour Relations Act*. Rather, it is a recommendation by the conciliator on the way forward. Therefore, section 68 of the *Labour Relations Act* does not apply to it.

Determination

12. In the face of the contested signatures on the purported recruitment and authorization schedule, I am unable to commit the employees to the process of deduction of the purported union dues without them confirming, by an additional instrument under their own hand, that they are in agreement that their salaries be subjected to the aforesaid deductions. Therefore, I decline to issue the interim orders sought.



13. In view of the contested nature of the signatures of the individuals that are likely to be affected by the deduction order, it is necessary that the Central Planning and Monitoring Unit (CPMU) housed at the Ministry of Labour and Social Protection verifies the actual numbers and signatures of employees (if any) that the Claimant has recruited for purposes of effecting collection of trade union dues.
14. The report by the CPMU to be filed in court within 60 days from the date of this decision.
15. This order be extracted and served by or under the guidance of the Deputy Registrar of this court and thereafter, the matter to be mentioned before the Deputy Registrar to confirm the filing of the report before further orders by and of the court.
16. Costs of the application shall abide the outcome of the main cause.

DATED, SIGNED AND DELIVERED ON THE 31ST DAY OF JULY, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

..... for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

