



**Kenya Concrete, Structural, Ceramic Tiles, Wood Plys & Interior
Designs Workers Union v China Wu Yi Company Limited (Cause
1452 of 2015) [2023] KEELRC 1809 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1809 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1452 OF 2015**

**L NDOLO, J
JULY 27, 2023**

BETWEEN

**KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOOD PLYS &
INTERIOR DESIGNS WORKERS UNION CLAIMANT**

AND

CHINA WU YI COMPANY LIMITED RESPONDENT

JUDGMENT

Introduction

1. The issues in dispute in this case as stated by the Claimant in its Memorandum of Claim are:
 - a. Refusal by the management to sign a recognition agreement contrary to Section 54 of the *Labour Relations Act*, 2007;
 - b. Refusal by management to deduct and remit union dues contrary to Section 19 of the *Employment Act*, 2007 and Section 48 of the *Labour Relations Act*, 2007;
 - c. Intimidation and harassment of employees.
2. The Respondent filed a Memorandum of Response dated July 1, 2019.
3. At the trial, the Claimant called its National General Secretary, Dishon Angoya and the Respondent called its Legal Officer, Josephat Ombogo Maroro. The parties also filed written submissions.



The Claimant's Case

4. In its Memorandum of Claim dated and filed in court on August 19, 2015, the Claimant states that it had recruited 182 employees of the Respondent, translating to 61% membership, well above the simple majority threshold of 50%+1. The Claimant adds that it had served check-off lists of the said members on the Respondent.
5. The Claimant accuses the Respondent of refusal to sign a recognition agreement and to deduct union dues for remittance to the Union.
6. The Claimant further accuses the Respondent of interfering with its members' right of association, intimidating and threatening them with the sole intention of unduly influencing them to withdraw their union membership.
7. The Claimant seeks the following remedies:
 - a. A declaration that the Respondent is in fundamental contravention of the law;
 - b. An order directing the Respondent to deduct and remit union dues to the Claimant;
 - c. An order directing the Respondent to enter into a Recognition Agreement with the Claimant and to commence negotiations of a Collective Bargaining Agreement.

The Respondent's Case

8. In its Memorandum of Response dated July 1, 2019 and filed in court on July 3, 2019, the Respondent states that it had received a letter dated June 11, 2014, forwarding check off lists of 143 employees drawn from two construction projects to wit; the University of Nairobi Towers and the KCB Headquarters at Upper Hill.
9. The Respondent further states that upon scrutiny of the check off list from the University of Nairobi Project, 17 persons were found not to be employees of the Respondent. The Respondent adds that 43 of those recruited by the Claimant were not its employees.
10. Further, the Respondent states that some of its employees whose names appeared on the lists submitted by the Claimant denied signing against their names and claimed that their signatures had been forged.
11. The Respondent avers that an attempt to deduct union dues from the employees who had been registered in the Claimant's membership, was met with resistance by some of the employees, resulting in a go-slow at the two construction sites.
12. The Respondent further avers that subsequently some of the employees who were members of the Union resigned from membership.
13. The Respondent claims that at the time of issuance of the check off forms by the Claimant, the total number of unionisable employees was 338 and the Claimant had only recruited 83 members.
14. The Respondent therefore asserts that the Claimant had not attained a simple majority as provided under Section 48 of the [Labour Relations Act](#).

Findings and Determination

15. At the time of hearing this case, a lot of time had lapsed since the occurrence of the acts in dispute. According to the Respondent, the projects in which the Claimant's members were deployed had been completed.



16. The Respondent also stated that many of the unionisable employees had revoked their union membership. The Respondent further took issue with the authenticity of the check off forms presented by the Claimant.
17. In its decision in *Transport Workers Union v Modern Coast Coaches Ltd & another* [2020] eKLR this Court stated thus:

“Union membership is by nature a fluid moving target. This is because employees will move out of an establishment either through normal exit or natural attrition. With this in mind, the Claimant ought to have presented current check off forms to show the present union membership status within the Respondents’ establishment. There is no way the Court can determine the issue of union membership in the year 2020 using data obtained in 2016.”
18. The present case is on all fours with the foregoing decision. The Claimant’s witness, Dishon Angoya told the Court that the check off forms relied on were forwarded to the Respondent in 2014. Evidently, a lot has shifted regarding the employment relationship between the Respondent and the Claimant’s members.
19. The Claimant therefore ought to have presented fresh documentary evidence to support its claim. Having failed to do so, the Claimant did not prove its case which is consequently dismissed.
20. Each party will bear their costs.
21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JULY 2023

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JUDGE

Appearance:

Mrs. Kamau for the Claimant

Mr. Ochieng for the Respondent

