



**Kenya Union of Commercial, Food and Allied Workers v Kenya Meat Commission  
(Cause E811 of 2022) [2023] KEELRC 1799 (KLR) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1799 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E811 OF 2022  
AN MWAURE, J  
JULY 25, 2023**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**KENYA MEAT COMMISSION ..... RESPONDENT**

**RULING**

1. The applicant has filed an application vide a notice of motion dated November 9, 2022. The applicant makes the following prayers.
  1. This application be certified urgent, service thereof be dispensed with and the same be heard *ex parte* in the first instance.
  2. Pending hearing and determination of this application, this hon. Court do issue an order granting the applicant reasonable access to the respondent’s Athi premises or at any of their branches once every month for purpose of meeting with members on industrial relations issues.
  3. Pending hearing and determination of this application, this hon. Court do issue an order granting the applicant access to hold meetings with the respondent once every month for purposes of discussing emerging labour grievance’s to ensure industrial peace and tranquillity necessary for growth and development.
  4. Pending hearing and determination of tis application, this hon. Court do issue an order allowing the applicant the right of access to the respondent’s unonisable employees for purposes of recruiting union members at least once every month



5. Pending hearing and determination of this application, this hon. Court do and hereby issue an order directing the respondent to set such reasonable conditions as shall be agreed upon between the parties as to the date, time and place within the respondents premise for the said meetings in the interest of operational and safety requirements.
  6. This hon. Court do grant any other appropriate relief as found just, appropriate and proper to meet the ends of justice.
  7. Costs of this application be in the cause.
2. The applicant states they have a valid recognition agreement with the respondent. The same came into effect on July 1, 2010 and is currently under review vide ELR 549 of 2013. This application is supported by the affidavit of applicant's branch secretary at Athi River by the name Rebeca Muthoki.
  3. She says the government transferred the management of the respondent to the Ministry of defence and key position of the respondents are managed by officers of Kenya defence forces.
  4. The deponent elaborates how the respondent has on numerous occasions refused them access to their premises for purposes of carrying out trade union activities, access which has been outrightly denied.
  5. The respondent was hence managed by a military management from the former civilian management.
  6. The respondents allowed a meeting on June 8, 2022 but that was the first and last of such meetings.
  7. The respondents have also declined to address issues of unpaid overtime and request to meet the members of the claimant have been denied by the respondent. The applicant is of the view that the respondent wants to edge the claimant from dealing with the worker's issues and do not want to be questioned on any issue even if they are in the wrong.

### **Determination**

8. The respondent had a collective bargaining agreement with the claimant which has lapsed but seems is applicable unless otherwise amended. The review of the said agreement is in court and is yet to be determined.
9. The court has considered the pleadings and the submissions and finds strong evidence to demonstrate the respondent for no good reason has failed to co-operate with the union and in particular has denied it access to its premises for purpose of legitimate meetings and interactions with its members.
10. Section 56(1) a-d of *Labour Relations Act* 2007 provide as follows:-
  56.
    - (1) Without limiting the matters that may be dealt with in a recognition agreement, a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employers premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including but limited not to—
      - (a) recruiting members for the trade union;
      - (b) holding meetings with members of the trade union and other employees outside of working hours;



- (c) representing members of the trade unions in dealings with the employer; and
- (d) conducting ballots in accordance with the constitution of the trade union.

11. In view of the foregoing the court also finds the respondent is in contravention of the above section 56 of Labour Relations Act and article 41 (1)(E) of the Constitution of Kenya 2010 which provide that every employee has the right to form, join or participate in the activities and programme of a trade union.
12. Further the matter of counterclaim raised by the respondent in their response is not data based as there is no evidence of what in this case constituted simple majority to disqualify the claimant from representing its members. The prayer for the union to refund the respondents funds collected is not merited as there is no evidence to support the funds collected if any by the claimant.
13. The court is satisfied that the prayers by the claimant vide the notice of motion dated November 9, 2022 and in particular prayers 2, 3, 4 and 5 are merited and so are granted.
14. The costs are awarded to the claimant.
15. The counterclaim however is not proved as earlier observed and is dismissed with orders to the claimant.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 25<sup>TH</sup> DAY OF JULY, 2023.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

