



**Kenya Petroleum Oil Workers Union v Proto Energy Ltd (Employment and Labour Relations Cause E331 of 2022) [2023] KEELRC 1677 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1677 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E331 OF 2022**

**AN MWAURE, J**

**JULY 7, 2023**

**BETWEEN**

**KENYA PETROLEUM OIL WORKERS UNION ..... CLAIMANT**

**AND**

**PROTO ENERGY LTD ..... RESPONDENT**

**RULING**

1. The application hereto dated 19<sup>th</sup> May 2022 where the applicant prayed for the following:-
  1. That this honourable court certify this application as urgent, be heard ex parte in the first instance.
  2. That the service of this application on the respondent be dispensed with in the first instance.
  3. That this honourable court do issue orders to compel the respondent to deduct and remit to the claimant union dues for all the 722 members who are the respondent's employees.
  4. That this honourable court do issue orders compelling the respondent to avail the list of unionisable employees to the claimant.
  5. That this honourable court do issue orders directing the respondent to sign the recognition agreement sent on 23<sup>rd</sup> August 2021 in accordance with section 54 of the *Labour Relations Act*, 2007.
  6. The costs of this application be provided for in favour of the claimant.
2. The application is supported by the affidavit deponed by George Okoth Omollo who depones that he is the general secretary of the claimant's union.



3. He avers that the claimant union received a recognition form on 23<sup>rd</sup> August 2021 and proposed to sign the document on 1<sup>st</sup> September 2021.
4. He says the claimant submitted check off forms for 722 unionisable employees who are above 51% of the simple majority required under section 54(1) of the *labour relations act* 2007 for purpose of recognition.
5. The check off forms were remitted to the respondent and respondent failed to deduct and remit union dues.
6. The respondent says the respondent refused to execute the recognition agreement. The claimant says he then reported an economic dispute on 9<sup>th</sup> September 2021 and the conciliator held the respondent's refusal to deduct the dues was in bad faith. The claimant said in the process of conciliation the respondent caused the members to sign a consent for deductions to be effected which in his opinion is not necessary.
7. The claimant says to date the respondent has not been remitting the union dues and the claimant says he is making the averment in support of the application.
8. The respondent has filed its grounds of opposition and states that the claimant has not recruited simple majority as required in section 54(1) of the *Labour Relations Act*. He says his total employees are 1,700 and so 722 do not make the simple majority.
9. He also says the claimant has not completed the membership form and so it is not easy to verify the signatures in the check off forms. He says the order by the minister is also not provided as provided in section 48(3) of the *Labour Relations Act*. He says for that reason he has no legal rights to deduct and remit the union dues.
10. He says for that reason the application dated 29<sup>th</sup> April 2022 is without merits and should be dismissed.
11. The submissions by the claimant and supplementary submissions by the claimant dated 25<sup>th</sup> July 2022 and 5<sup>th</sup> December 2022 respectively were duly considered by the court.

### **Analysis and submissions**

12. The claimant annexed the list of the members who had agreed to join the union and signed the check off forms and so voluntarily became members of the union. The respondent attempted to obtain consent from the employees to join the union but by signing the check off forms there was no other requirements to sign in the consent. Section 48 (3) of the *labour relations act* provide as follows:
 

“ An employer in respect of whom the minister has issued an order under subsection 2 shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union's notice in form S set out in the third schedule signed by the employees in respect of whom the employer is required to make a deduction.
13. Then section 19(1)(f) of *Employment Act* provide that any employer can deduct any amount the deduction of which is authorised by written law for the time being in force, collective agreement, wage determination, court order or arbitration award.
14. The records in court show the union had recruited 687 members before the matter was referred to the Ministry of labour and there are as proof check off forms. The respondent has not adduced any evidence to contradict this averment.



15. The claimant has provided a ministerial order as required by the law and as well the respondent has not raised any issue to the contrary as pertains to that ministerial order.
16. The court finds the respondent has no valid grounds to refuse to deduct its employees dues and remit them to the union. This is a constitutional provision under article 41 of the Constitution of Kenya that guarantees the right of every worker to form or join a trade union.
17. The respondent as well has not demonstrated the claimant did not meet the threshold of a simple majority. The records show the members recruited were 722 and there were check off forms. The respondent did not produce records of the total members in his employment and so to repute that the claimant had not met the threshold of the simple majority is not justified.
18. In the case of Kenya Union of Commercial Food & Allied workers vs Kinangop Dairy Limited (2021) eKLR the court held:

“Cumulatively the claimant accuses the respondent of frustrating the claimant’s efforts to establish union activities within the respondent’s establishment. There is evidence on record that the respondent did not honour the claimant’s request for a meeting.”

The court went further to find that the respondent did not provide any evidence of deductions and remittances of union dues on account of the duly recruited employees.

19. Flowing from the pleadings and submissions thereto the court is convinced the claimant has proved its case to warrant grant of orders sought under their application dated 19<sup>th</sup> May 2022 as hereunder and the below orders are granted.
20. That this honourable court do issue orders to compel the respondent to deduct and remit to the claimant union dues for all the 722 members who are the respondent’s employee’s.
21. That this honourable court do issue orders compelling the respondent to avail the list of unionisable employees to the claimant.
22. That this honourable court do issue orders directing the respondent to sign the recognition agreement sent on 23<sup>rd</sup> August 2021 in accordance with section 54 of the Labour Relations Act, 2007.

Costs of the application to be paid by the respondent.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 7<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**

