



Kenya Petroleum Oil Workers Union v Stratostaff EA Ltd (Employment and Labour Relations Cause E951 of 2022) [2023] KEELRC 2273 (KLR) (29 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2273 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E951 OF 2022
BOM MANANI, J
SEPTEMBER 29, 2023**

BETWEEN

KENYA PETROLEUM OIL WORKERS UNION CLAIMANT

AND

STRATOSTAFF EA LTD RESPONDENT

RULING

1. The Claimant is a registered Trade Union that represents employees in the oil and petroleum sector in Kenya. On the other hand, the Respondent is a Human Resource Company that is engaged in outsourcing of labour within the Republic of Kenya. The parties are in agreement that the nature of the Respondent's business is such that it outsources staff to players in different sectors of the economy.
2. The dispute between the Claimant and Respondent relates to the right of recognition and the obligation by the Respondent to deduct and remit union dues to the Claimant from the Respondent's employees who are members of the Claimant. The Claimant alleges that it has recruited one hundred and forty two (142) employees of the Respondent as its members. It is the Claimant's contention that this number constitutes more than a simple majority of the Respondent's employees who are engaged in the petroleum sector. Consequently, the Claimant believes that it has met the statutory threshold for recognition by the Respondent.
3. The Claimant avers that despite meeting this threshold, the Respondent has declined to enter into a recognition agreement with it. The Claimant also contends that the Respondent has allegedly refused to deduct union dues from the Claimant's members and remit the same to the Claimant.
4. As a result of the foregoing, the Claimant has filed this cause seeking the court's intervention to compel the Respondent to deduct and remit to it the requisite union dues. As well, the Claimant prays that the Respondent be compelled to enter into a recognition agreement with it.



5. On its part, the Respondent disputes all the assertions by the Claimant. According to the Respondent, the Claimant is yet to recruit a simple majority of its workforce which will entitle the Claimant to recognition. Further, the Respondent contends that it has faithfully deducted union dues from its employees who have signed up with the Claimant and remitted such dues to the Claimant.
6. The Respondent further avers that over time, some of the employees who had joined the Claimant have since withdrawn their membership. As such, the Respondent cannot deduct and remit to the Claimant union dues in respect of these employees.

Application for Interim Reliefs

7. Contemporaneous with the Statement of Claim, the Claimant filed an application dated December 16, 2022 seeking the following orders: -
 - a. Spent.
 - b. That the action be certified as urgent and be heard on priority basis since it relates to a quest for recognition.
 - c. That the Respondent be compelled to commence deduction of union dues from the Claimant's members and to remit such dues to the Claimant.
 - d. That the Respondent be directed to share with the Claimant details of deductions of union dues made against the members of the Claimant for purposes of verification.
 - e. That the Respondent be restrained by an order of injunction from victimizing and or terminating from its employment members of the Claimant on account of their union membership.
 - f. That the Claimant be granted costs of the application.
8. Upon being served with the application, the Respondent filed a replying affidavit in which it states as follows:-
 - a. That it has faithfully deducted and remitted union dues from all employees who have signed up with the Claimant.
 - b. Some of the employees who had joined the Claimant union have since withdrawn their membership. This has precluded the Respondent from making union deductions in respect of this set of employees.
 - c. That the Respondent has not intimidated or victimized any of its employees on account of their trade union membership.

Analysis

9. In the affidavit dated December 16, 2022, the Claimant made a general accusation against the Respondent alleging that the Respondent had refused to deduct and remit union dues for employees who are members of the Claimant. In reaction to the accusation, the Respondent filed an affidavit indicating that contrary to the Claimant's assertions, it had been deducting and remitting union dues from employees who were members of the Claimant union. The Respondent stated that the deductions were effected from June 2022 following an agreement between the parties that the Respondent effects voluntary deductions in respect of employees who had joined the Claimant.



10. Faced with this response, the Claimant swore a further affidavit in which it now alleges that of the 142 employees in the initial check-off list, the Respondent had failed to make union deductions in respect of 55 employees. The Claimant further contends that the Respondent has also reneged on the obligation to make union deductions in respect of a further 31 employees whose check-off forms were submitted on January 18, 2023.
11. In effect, I understand the Claimant to now be stating that as at the close of December 2022, it was receiving union dues for all its members save for the 55. However, this number has since grown by an additional 31 employees as from January 2023.
12. The Claimant has come to court to seek for interim mandatory and prohibitory injunctive orders pending the hearing and disposal of its case. Through these orders, the Claimant wants the court to compel the Respondent to deduct union dues and remit the same to it. As well the Claimant wants the court to issue an order to prevent the Respondent from harassing its members on account of their union membership.
13. An important ingredient for issuance of discretionary orders is the duty of full and candid disclosure of pertinent facts by the party that is seeking the orders. If such party attempts to procure the orders without full disclosure of material facts, the court ought to decline the request. It is critical that the party seeking interim discretionary reliefs approaches the court with clean hands (*Nabashon Njage Nyaggah v Savings & Loan Kenya Limited & another* [2006] eKLR).
14. The Claimant's failure to disclose that the Respondent was in fact remitting a portion of the union dues and that the dispute relates to only a part of and not the entire dues is disturbing. Such conduct must not be countenanced by the court.
15. The Respondent has indicated why it is not deducting union dues in respect of some of its employees. It is indicated that these employees have withdrawn from being members of the Claimant. To support this assertion, the Respondent has provided a schedule of notices suggesting that some of its employees have since withdrawn from the Claimant union.
16. It is true as the Claimant asserts that the law requires the Respondent to share with it information about such withdrawals. It appears that the Respondent did not discharge this statutory obligation.
17. However, the court cannot turn a blind eye to the fact that, prima facie, there are notices suggesting that some of the Claimant's members have since recalled their membership from it. The truthfulness of this allegation needs to be verified through trial. Until this is done, the court cannot compel the Respondent to make remittances to the Claimant in respect of these employees.
18. It is curious that the Claimant should demand that the Respondent supplies it with details of the remittances it has made in respect of the Claimant's members. The remittances are presumably made to the Claimant's accounts. It is therefore presumed that the Claimant already has this information unless it is able to demonstrate the contrary. Thus, to require the Respondent to supply this information without proper basis is to place an onerous task on the Respondent.
19. That said, the Respondent has placed on record a schedule of remittances of union dues against the names of the employees for whom the remittances were made. The Claimant has not challenged this data. It will therefore be superfluous for the court to issue an order requiring the Respondent to furnish the Claimant with the same information.
20. Although the Claimant alleges harassment and intimidation of its members, there is no prima facie evidence to back this claim. The fact that some of the employees have resigned from membership of



the Claimant or that the Respondent has proposed a redundancy at the workplace is not, per-se, proof of harassment of staff by the Respondent.

21. To establish the assertion of harassment, the Claimant ought to have procured affidavit evidence from some of the employees that have allegedly been harassed or their shop floor representatives indicating that their decision to resign from the Claimant was involuntary. Absent this evidence, the court will be acting on conjecture if it sustained the Claimant's assertion in this respect.
22. The Claimant has accused the Respondent of manipulating some of the Claimant's members into withdrawing their membership. To support this argument, the Claimant asserts that the withdrawal letters that have been displayed are by one hand.
23. Again, the Claimant makes this assertion without the benefit of evidence from the affected employees or their shop floor representatives to affirm that they were coerced into tendering the impugned withdrawals. Absent this evidence, it is not permissible for the court to make assumptions on this fact. This assertion must be ascertained through evidence during trial.
24. Having regard to the fact that there is a dispute regarding the exact number of employees that the Claimant has recruited and how many of them have withdrawn their membership, it is only sensible that the court independently verifies these facts. Accordingly, it is my view that this is a suitable matter for the court to require the Central Planning and Monitoring Unit (CPMU) at the Ministry of Labour and Social Protection to conduct an audit of membership of the Claimant at the Respondent establishment and to file a report with the court before hearing of the claim.

Determination

25. The upshot is that the court declines to grant the orders sought in the application dated December 16, 2022.
26. Instead, I order the CPMU to conduct an audit of the Respondent's workforce to ascertain the following: -
 - a. What is the total workforce of the Respondent?
 - b. How many of the Respondent's employees are members of the Claimant?
 - c. How many of the Respondent's employees are engaged in the petroleum sector?
 - d. The CPMU to file its report with the court within 30 days of this order.
 - e. Costs of this application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF SEPTEMBER, 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

