**Kenya Union of Road Contractors and Civil Engineering Works v China Road & Bridge Corporation; Kenya Building Construction Timber & Furniture Employees Union (Interested Party) (Cause E117 of 2022) [2023] KEELRC 2135 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2135 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE E117 OF 2022**

**NJ ABUODHA, J**

**SEPTEMBER 22, 2023**

**BETWEEN**

**KENYA UNION OF ROAD CONTRACTORS AND CIVIL ENGINEERING WORKS ..... CLAIMANT**

**AND**

**CHINA ROAD & BRIDGE CORPORATION ..... RESPONDENT**

**AND**

**KENYA BUILDING CONSTRUCTION TIMBER & FURNITURE EMPLOYEES UNION ..... INTERESTED PARTY**

## JUDGMENT

1. The claimant filed a memorandum of claim dated February 16, 2022 seeking orders among others that:

    a). Thatthe Court grants an order directing the respondent to remit to the claimant monthly union dues of its members as set out in the shared check-off forms.

    b). Thatthe Court grant an order directing the respondent to pay all unremitted union dues from February, 2020 to date due from the claimant's members from its own account.

    c) An order directing the respondent to immediately sign recognition agreement and embark on CBA negotiations. Any purported recognition with a union with no members be revoked.

2. The claimant alleged that by February, 2020, it had recruited unionisable employees in the respondent's employment and forwarded "Form S" bearing the names of 728 employees. According to the claimant, the respondent deliberately refused to deduct and remit union dues which forced the claimant to refer a dispute in accordance with section 62 of the *Labour Relations Act*. Further based on the check-off forms, the claimants also sought for recognition by the respondent which again the

respondent declined. According to the claimant the conciliator prepared her report dated August 20, 2020 in which she recommended that the respondent does without delay deduct and remit union dues in favour of the claimant. The respondent once again failed to comply with the conciliator's recommendation and continued to deduct union dues from its alleged members but failed to remit the same to the claimant. The claimant further stated that according to the conciliator, there were no resignation letters from the claimant's members to join the Interested Party hence the argument by the respondent that they had a recognition agreement and a CBA with the Interested Party was a betrayal to the said workers.

3. According to the respondent, it had no way deliberately or otherwise refused to deduct and remit union dues to the claimant and that it had not defied the provisions of the *Labour Relations Act*. The respondent never received resignation letters from its unionisable employees allegedly recruited by the claimant indicating their resignation from the Interested Party. According to the respondent, it had a recognition agreement with the Interested Party since 5th April, 1987 and has negotiated several CBA over the years. According to the respondent the claimant had not produced any tangible evidence of recruitment of simply majority membership of its employees.

4. The Interested Party's case was that it was the union recognized by the respondent since April 5, 1987 and has since negotiated several CBAs including the current one which was running from 2021 to 2023 and that the current CBA was under review. The Interested Party further stated that pursuant to the current CBA the Interested Party was issued with Union Agency Fee Order vide Legal Notice No. 176 of 2021. Further, the Interested Party had not been served with withdrawal letters from its membership who allegedly joined the claimant. The Interested Party therefore complained that the claimant had meddled with organized workforce by disrupting the activities of the Interested Party in. the respondent's workplace.

5. Recognition of a trade union is governed by the provisions of section 54(1) of the *Labour Relations Act*. It stipulates that an employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees. However as was held in the cases *Aviation & Allied Workers Union v Kenya Express Limited and Another* [2013] eKLR and *Kenya Shoe and Leather Workers Union v Crown Industries & Anor* [2017] eKLR, attainment of simple majority is a matter of evidence and a trade union may lose an accrued recognition if its numbers drop below the simple majority threshold. A union seeking recognition must therefore provide sufficient documentary evidence showing it has met the requirements stipulated under section 54(1) of the *Labour Relations Act*. That is to say sufficient documentary evidence showing it has recruited a simple majority of the unionisable employees in the employment of the employer from which it seeks recognition.

6. It was not in dispute that the Interested Party is the older of the two unions. Further the claimant union did not deny that the Interested Party had a recognition agreement with the respondent. It was also stated in submissions before the Conciliator that the respondent and the Interested Party had a running CBA. All the claimant said is that the Interested Party had lost the simple majority of unionisable employees of the respondent.

7. If as is the case here that the Interested Party was the first in time and had a recognition agreement and a running CBA with the respondent, then it could not be possible for the claimant union to recruit again unionisable employees in the membership of the Interested Party without providing resignation letters from the employees concerned indicating their decision to resign from the Interested Party. Section 48 of the *Labour Relations Act* stipulates in paraphrase that an employer shall not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union. The import of this provision is that one establishment cannot have two unions representing

its workers and that a unionisable employee cannot belong to more than one union. No allegation or evidence was produced before the Court to show that the alleged unionisable employees that were claimed to have joined the claimant union resigned from the interested party. In this context, the claimant could not have validly recruited the alleged unionisable employees without evidence that they had resigned from the Interested Party which as observed earlier, had a recognition agreement and a running CBA with the respondent.

8. The Court notes that the claimant union is comparatively new in the field where the interested party and other unions have operated for a long time. There is therefore obviously a tuff war by the older unions. The claimant union however has a right to compete for and recruit members however such recruitment ought to be done in accordance with the law particularly *Labour Relations Act*. Nothing prevents the claimant union from continuing with its campaign to make inroads to establishments previously dominated by the interested party and others. It is within its right to persuade unionisable employees in the respondent's and other establishments that it is the best union suited to agitate for and protect their interest.

9. In conclusion the claim is found without merit and is hereby dismissed with no order as costs since the question for determination by the Court was over which union was best placed to represent the unionisable employees of the respondent. This is an issue of mutual interest for the claimant, the respondent and the interested party and for the larger industrial relations.

10. It is so ordered

**DATED AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2023**

**ABUODHA J.N**

**JUDGE**

**DELIVERED AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2023**