



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Engineering Workers Union v M/S Crom Impex (K) Limited (Cause 279 of 2016) [2023] KEELRC 2138 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2138 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 279 OF 2016**  
**NZIOKI WA MAKAU, J**  
**SEPTEMBER 21, 2023**

**BETWEEN**

**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**

**AND**

**M/S CROM IMPEX (K) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant Union filed a Memorandum of Claim dated 25<sup>th</sup> April 2019 against M/S Crom Impex (K) Limited seeking the following prayers:
  - a. That the Respondent be ordered to comply with the mandatory provisions of the Law being section 48 of the *Labour Relations Act* 2007, by way of deducting and remittance of union dues.
  - b. That the Honourable Court be pleased to order the Respondent to accord the Claimant Recognition Agreement by signing the same within specific shortest time frame to pave way for CBA negotiations.
  - c. That the Respondent be ordered to pay 2% of the Claimant's members' gross salaries from the month of March 2019 for the 7 employees from her own pocket.
  - d. That the Honourable Court to issue Orders against the Respondent from victimizing the Claimant members on ground of Trade Union activities/ affiliation.
  - e. That any other relief the Honourable Court may deem fit to grant.
  - f. That the cost of this suit be met by the Respondent to the Claimant.
2. It was the Claimant's averment that it recruited the Respondent's employees in the month of December 2018 but the Respondent refused to deduct and remit union dues despite having been



- served with the duly signed original check-off forms. That the Respondent also declined to sign the Recognition Agreement prompting the Claimant to report a trade dispute to the Ministry of Labour. It further averred that the Respondent had started threatening the Claimant's members with termination and or dismissal.
3. According to the Claimant Union, it has met all the three requirements meant for Recognition Agreement being: there is no rival union at the Respondent company; it had recruited 90% of the unionisable employees of the Respondent, which is above the required 51% simple majority; and it is the most relevant union as per its duly registered constitution.
  4. Despite having entered appearance through the firm of Archer & Wilcock Advocates, the Respondent did not file any response to the Memorandum of Claim. The suit was disposed by way of written submissions and only the Claimant filed its submissions.
  5. It was the Claimant's submission that the Court issued Orders on 15<sup>th</sup> November 2019 directing the Respondent to comply with section 48 of the [Labour Relations Act](#), 2007 by way of deduction and remittance of union dues. It urged the Court to also confirm in the Judgment, its Orders of 16<sup>th</sup> May 2019 on the issue of victimization and termination of service of the Claimant members. The Claimant submitted that it had met the three requirements of the law to warrant Recognition Agreement and that no sufficient evidence had been filed in court to the contrary. It cited ELRC Cause no. 14 of 2020, [Kenya Engineering Workers Union v Alpha Logistics \(EPZ\) Limited](#) and argued that it had in her membership, 100% unionisable employees.
  6. On the issue of payment of arrears, the Claimant submitted that the Respondent should pay the same from the time the suit was filed since the Respondent had not disputed having been served with the check-off forms. That this position was held by the Court in the following cases: Nakuru ELRC Cause no. 19 of 2017, [Kenya Engineering Workers' Union v Aluminium Kenya Limited](#); Nairobi ELRC Cause no. 759 of 2012, [Kenya Union of Entertainment and Music Industry Employees v Bomas of Kenya](#); and Nairobi ELRC Cause no. 1915 of 2014, [Kenya Union of Entertainment and Music Industry Employees v Sport Stadia Management Board](#). It was the Claimant's submission that the Respondent's employees earn salaries of the Regulation of Wages General Order at the minimum hence the union dues shall be 2% of ksh 15,201.85/- for General Labourer. That the tabulation for seven (7) employees at that salary for 51 months would thus total to ksh 108,535/-, which are the union dues in arrears.
  7. The Claimant has raised an issue that is pertinent in labour relations. Once the Union in question has met the criteria for its recognition in terms of the [Labour Relations Act](#), the employer is bound to give the Union an opportunity to initiate the process of leading to a recognition agreement. The employer does not aid itself when it declines to commence deductions as per the check off forms availed to it. Once the employer commences the process of ignoring the clearly set out procedures under the [Labour Relations Act](#), it opens itself to a suit such as this one with attendant consequences.
  8. The Claimant has proved the sums that were to be deducted. The Respondent did not file any defence nor did it proffer any evidence to contradict the position placed before the Court by the Claimant. The Respondent had an opportunity to raise any issues that were pertinent to it in a defence, avail documents and even witnesses but chose not to pursue this option. As such, the Court has considered the evidence of the Claimant as uncontroverted, uncontested and thus proved. The Claimant seeks the award of the sum that would have been paid out of the deductions of Union dues being ksh 108,535/-, which are the union dues in arrears for the 51 months. The Respondent should pay the sum out of its funds without any recourse to the employees who are members of the Union. This is for having failed to operationalize the deductions as required under the law. The Respondent shall also henceforth



initiate deductions and remittance of union dues for the remaining employees who are members of the union in the company. The parties should also commence negotiations leading to the Recognition Agreement as provided for under the Labour Relations Act. The Claimant shall be entitled to costs which I assess at ksh 20,000/-. There shall also be interest on the sum awarded, not the interest, at court rate i.e. 14% per annum from the date of judgment till payment in full. In the final analysis judgment is entered for the Claimant against the Respondent as follows-

- a. ksh 108,535/- being unpaid union dues.
- b. Respondent to henceforth initiate deductions and remittance of union dues.
- c. Commence negotiations leading to the Recognition Agreement as provided for under the Labour Relations Act.
- d. Costs – ksh 20,000/-.
- e. Interest on the sum in (a) above at Court rates from date of judgment till payment in full

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023**

**NZIOKI WA MAKAU**

**JUDGE**

