



**Kenya Building Construction, Timber and Furniture Industries
Employees Union v Thomas & Piron Grands Lacs Ltd (Cause 79 of 2019)
[2023] KEELRC 2112 (KLR) (20 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2112 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 79 OF 2019
S RADIDO, J
SEPTEMBER 20, 2023**

BETWEEN

**KENYA BUILDING CONSTRUCTION, TIMBER AND FURNITURE
INDUSTRIES EMPLOYEES UNION CLAIMANT**

AND

THOMAS & PIRON GRANDS LACS LTD RESPONDENT

JUDGMENT

1. The Kenya Building, Construction, Timber and Furniture Industries Employees Union (the Union) sued Thomas and Piron Grands Lacs Ltd (the Respondent) on 11 September 2019, alleging unlawful redundancy of 10 employees (the Grievants).
2. The Respondent filed a Response on 31 October 2019 and the Cause was heard on 27 September 2022, 16 January 2023, 20 March 2023 and 12 June 2023. 7 of the Grievants and the Respondent’s Human Resource Manager testified.
3. The Union filed its submissions on 31 July 2023, and the Respondent’s submissions were not on record by the set timeline of 30 August 2023).
4. The Court has considered the pleadings, evidence and submissions.

Recognition agreement

5. The Respondent objected to the competency of the Cause on the ground that it did not have a recognition agreement with the Union, hence the Union did not have the locus standi to sue on behalf of the Grievants.
6. The Union did not demonstrate that it had a recognition agreement with the Respondent.



7. However, in *Mombasa Soap Ltd v Kenya Shoe and Leather Workers Union* (2020) eKLR, the Court of Appeal faced with a case where a Union sued despite not having a recognition agreement with an employer stated:

"A recognition agreement is defined under Section 2 of the *Labour Relations Act* as an agreement in writing made between a trade union and an employer, group of employers or employers' organisation regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers' organisation. It is a bilateral agreement between a trade union and an employer on the basis of which the trade union engages with the employer regarding the terms and conditions of employment of its members. It is not the basis upon which the trade union represents its members in court."

8. In consideration of the holding by the Court of Appeal, this Court finds the objection on locus standi without merit.

Employment relationship

9. The Respondent also resisted the Cause on the ground that the Grievants were strangers to it and that it had not had an employment relationship with it.
10. The Grievants who testified stated that the Respondent did not issue them with written contracts and that they were engaged (on listed dates) by the Respondent in a project to construct Bar Union Primary School in Nyahera. The Grievants gave the name of their Manager as Mr Alexander Andor.
11. It is the responsibility of an employer to issue a written contract where the circumstances set out in section 9 of the *Employment Act* are applicable. Pursuant to section 10(7) of the *Employment Act*, 2007, where the employer fails to produce a contract, the Court is expected to believe the testimony of the employee.
12. The Respondent did not deny that it had a construction project at Bar Union Primary School. It produced a copy of a Discharge and Acknowledgement form in respect of one of the Grievants. It could not have prepared and produced such a record if it did not have an employment relationship with the Grievants.
13. The Respondent's witness stated during oral testimony that the Grievants were its employees paid on a daily basis. The Grievants assertions that the employment relationship started in 2015 for the 1st to 8th Grievants, 2016 for the 9 and 10th Grievants was not controverted.
14. On the basis of the Grievants and Respondent's witness testimonies and copy of the Discharge form as a secondary evidence, the Court finds that the Respondent employed the Grievants at its project at Bar Union Primary School.

Casual employees

15. The Respondent took the position that the Grievants were casual employees paid daily.
16. The Grievants on their part testified that although they were on daily rates of pay, payment was made weekly and that they served continuously from different dates in 2015/2016 until they were sent away on 30 April 2017.
17. The Respondent did not produce any records at all to show that the Grievants were paid daily and or engaged on a need basis.



18. A casual employee is one who is paid at the end of each day and the evidence before the Court is that the Grievants were paid weekly, removing them from the genre of casual employees. The Grievants were on term contracts with the Respondent.

Unfair termination of employment

19. The Grievants asserted redundancy under section 40 of the *Employment Act*.
20. Section 40(1) of the *Employment Act* contemplates written notice of intended redundancy to either the trade union the employee is a member or to the employee and the local Labour officer.
21. The Court has concluded that the Grievants were on term contracts. They were entitled to the protections outlined in section 40 of the *Employment Act*.
22. The Respondent appeared to suggest in evidence that the construction project was approaching completion but did not give any dates when it completed the project. The Grievants testified that construction was ongoing at the time they were directed to stop reporting to work.
23. Whether it was completion of the project or redundancy, it was upon the Respondent to place before the Court the reason(s) why it brought the contracts of the Grievants to an end as demanded by sections 43 and 45 of the *Employment Act*.
24. There was no evidence that the Grievants' contracts were terminated on account of any misconduct or performance on their part.
25. The Respondent did not discharge the burden of proving the reasons and validity and fairness of the terminations, and since there were no written notices, the Court concludes that the Respondent unfairly terminated the Grievants contracts.

Remedies

Notice pay

26. The Grievants were paid by the week and they would be entitled to the equivalent of 1 week's wage each as salary in lieu of notice.

Severance pay

27. The Grievants did not contribute to the termination of their contracts and the Court will allow the equivalent of 15 days' pay for each completed year of service.

Leave

28. An employee is entitled to 21 days' annual leave with full pay. The Respondent did not produce leave records as envisaged by section 10(3) of the *Employment Act* and in consideration of section 28(4) of the *Employment Act*, the Court awards each Grievant the equivalent of a month's salary in lieu of leave.

Earned wages

29. The Grievants are entitled as of right to earned wages for the days worked in April 2017 and the Court allows the head of the claim.



Conclusion and Orders

30. The nature of the findings herein require that the parties compute the dues found owing to the Grievants.
31. The Court orders the parties to compute and file the dues in Court within 30 days for adoption.
32. The Claimant did not have a recognition agreement with the Respondent and therefore each party to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 20TH DAY OF SEPTEMBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

