



**Kenya Union of Commercial, Food and Allied Workers v Sonado
Ceramics Limited (Employment and Labour Relations Cause
E188 of 2023) [2023] KEELRC 2564 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2564 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E188 OF 2023
BOM MANANI, J
OCTOBER 19, 2023**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

SONADO CERAMICS LIMITED RESPONDENT

RULING

1. The dispute before me relates to the right to recognition of the Claimant by the Respondent. According to the Claimant, it has carried out recruitment of unionizable employees at the Respondent's establishment and met the statutory threshold for recognition. However, the Respondent has been reluctant to conclude this process thus necessitating this action.
2. According to the Claimant, it has recruited 21 out of the 35 individuals working for the Respondent. The Claimant contends that this is more than 51% of the Respondent's workforce. As such, the Respondent is obligated to grant it recognition for purposes of collective bargaining as required by section 54 of the *Labour Relations Act*.
3. The Claimant further contends that despite asking the Respondent to deduct union dues from the Claimant's members and remit the money to the Claimant, the Respondent has failed to discharge this task. As a result, the Claimant's union activities have been unduly hampered and the right of its members working with the Respondent to be represented by a trade union of their choice unduly prejudiced.
4. The Claimant avers that when the Respondent was notified of the obligation to grant the Claimant recognition to enable the process of collective bargaining, the Respondent begun intimidating its employees in an effort to have them withdraw their union membership. According to the Claimant,



the Respondent's actions are a deliberate attempt to reduce the number of employees who have joined the Claimant in a bid to stall the recognition process.

5. On its part, the Respondent denies having declined to accord the Claimant recognition. According to the Respondent, when the Claimant approached it with the request for recognition, the Respondent consulted its lawyers over the matter. The lawyers called for documents from the Claimant evidencing membership of the Respondent's employees with the Claimant and a copy of the draft recognition agreement to enable further deliberations. However, the Claimant did not supply the documents in time.
6. The Respondent avers that at the time of filing these proceedings, the parties had hardly consulted in order to amicably resolve the dispute. According to the Respondent, the Claimant had just supplied the Respondent's lawyers with the documents they had asked for when it (the Claimant) rushed to court with the current action.
7. The Respondent indicates that at the time the Claimant commenced recruitment of its members, the Respondent was undergoing a financial downturn and had initiated a redundancy process at the workplace. The Respondent believes that this process was going to impact on some of the Claimant's members. As such, the Respondent was not able to sign the recognition agreement before the process closed. The Respondent has asked that the court permits the parties a chance to deliberate on the matter and reach consensus.

Analysis

8. It is not in dispute that once a trade union recruits a simple majority of employees at the workplace, the employer has a constitutional and statutory obligation to accord such trade union recognition for purposes of collective bargaining. The employer has no window of declining to grant the union recognition.
9. The court is however alive to the need to allow the parties latitude to travel the journey towards recognition and collective bargaining in a voluntary manner. As such, the court will hardly intervene in the process unless it is clear that the employer is placing unreasonable hurdles in the way.
10. The Claimant asserts that it has recruited more than a simple majority of the Respondent's employees. The Respondent has not denied this fact. Ideally, this should require the Respondent to issue the Claimant with recognition.
11. However, the Respondent states that at the time the Claimant commenced the recruitment exercise, there was an ongoing redundancy procedure at the workplace. According to the Respondent, this procedure impacted on a number of employees who are members of the Claimant. This may have affected the statutory threshold for recognition under section 54 of the *Labour Relations Act*.
12. It is disconcerting that whilst the Respondent alleges that there has been an ongoing redundancy process that may have impacted on the Claimant's membership, it (the Respondent) does not supply full data on the matter. Yet, as the employer, the Respondent is expected to be in possession of this data.
13. Nevertheless, I have taken note of the Respondent's willingness to sit with the Claimant to address outstanding issues before the parties can sign the recognition agreement. In the premises and in exercise of the powers conferred on the court by section 15 of the *Employment and Labour Relations Act*, I am minded to refer the dispute to conciliation so that the parties can resolve any outstanding issues amicably in accord with the voluntary nature of collective bargaining. However, the parties must close the process leading to recognition within forty five (45) days from the date of this order.



14. I have taken this approach to seeking a solution to the dispute particularly in view of the fact that the parties do not appear to have invoked the dispute resolution mechanism under Part VIII of the Labour Relations Act prior to approaching the court. Yet, there is every indication that if they had done so, the matter would probably have been resolved without the need of approaching the court.

Determination

15. The court directs that the dispute between the parties be referred to the Ministry of Labour and Social Security for purposes of appointment of a conciliator to oversee the process that will lead to the parties signing a recognition agreement in the event that the Claimant still holds a simple majority of the Respondent’s workforce.

16. The conciliator should facilitate the exercise and file a report back in court within forty five (45) days of this order.

17. In the meantime, this matter shall be stayed pending the conciliator’s report.

18. During the period aforesaid, the orders issued by this court on 9th March 2023 shall remain in force with the intent that the Respondent shall not engage in any acts that shall be construed as amounting to victimization of employees with the intention of frustrating the recognition process.

DATED, SIGNED AND DELIVERED ON THE 19TH DAY OF OCTOBER, 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

