



**Kenya Union of Commercial, Food and Allied Workers v Whizz Photo Limited (Employment and Labour Relations Cause E613 of 2021) [2023] KEELRC 2608 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2608 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E613 OF 2021  
MA ONYANGO, J  
OCTOBER 19, 2023**

**BETWEEN**

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

**AND**

**WHIZZ PHOTO LIMITED ..... RESPONDENT**

**RULING**

1. The application dated 28<sup>th</sup> July 2021 and filed in court on 30<sup>th</sup> July 2021 has been brought by the Claimant. It seeks the orders that:
  - i. Spent
  - ii. Spent
  - iii. That pending the hearing and determination of this suit, this Honorable Court order the Respondent to commence deduction and remittance of Union dues from the employees whose names appear on the check off sheets.
  - iv. That this Honorable Court do set down this matter for hearing and determination on priority basis.
  - v. That costs of this Application be in the Cause.
2. The grounds upon which the application is made are contained at the foot of the application. Briefly, they are that the Respondent herein is a shop engaged in sales and distribution of studio equipment; that the Claimant’s constitution and rules allow it to recruit, enroll and represent the Respondent’s Unionisable employees; that in the month of March 2019, the Claimant recruited five(5) out of five(5) unionisable employees of the Respondent which is over the 50% +1 simple majority as required for purposes of Recognition; that on 25<sup>th</sup> March, 2019, the Claimant forwarded draft



- Recognition Agreement for perusal in readiness for a meeting proposed to take place on 2<sup>nd</sup> April 2019 for introduction and signing the Recognition Agreement; that the Respondent unfairly, unjustifiably and unlawfully refused to sign the Recognition Agreement.
3. The Claimant avers that it reported a trade dispute to the Ministry of Labor on refusal by employer to sign the Recognition Agreement in accordance with the provisions of Section 62 of the Labor Relations Act.
  4. In reply to the application the Respondent filed a Replying Affidavit sworn on 1<sup>st</sup> November 2021 by Mr. Samir Bhanji one of its directors. In the affidavit it is deposed that the grievants named Gabriel Odhiambo, Chrispine Olele and Ezekiel Oteki had been sent on compulsory leave due to Covid 19 pandemic and that they did not resumed their duties to date of the affidavit.
  5. Mr. Bhanji further deposed that Chrispine Olele filed a case against the Respondent which case is still pending in court being Milimani CMEL E 1464 of 2021 and that as such he is not entitled to the prayers sought herein; that the grievants, Alex Mwenda left employment before signing as a member of the union while Francis Gavali tendered his resignation to the Respondent. With respect to the grievant Gabriel Odhiambo, it is deposed that he was paid his benefits at the labour office and that as such the prayers being sought cannot issue on his behalf.
  6. According to the Respondent, the application herein is premature and without basis as the Applicant has not established whether the grievants' Gabriel Odhiambo and Ezekiel Oteki are still in its employment.
  7. The Court was thus urged to dismiss the instant application with costs.
  8. Parties were directed by the Court to canvass the application by way of written submissions. The Claimant's submissions on record are dated 2<sup>nd</sup> September 2022 and the Respondent's submissions are dated 19<sup>th</sup> September 2022.
  9. I have considered the application and the response as well as the submissions of the parties. In my view, the issues raised herein are weighty and the veracity of the allegations made can only be ascertained if the parties herein tender evidence in court in order for justice to be dispensed.
  10. As such, the application dated 28<sup>th</sup> July 2021 is allowed in terms of prayer (iv) only.
  11. I accordingly direct that this matter be fixed for full hearing.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 19<sup>TH</sup> DAY OF 2023**

**M. ONYANGO**

**JUDGE**

