



**Signon Group v Kenya Long-Distance Truck Drivers and Allied Workers Union  
(Cause 1768 of 2017) [2023] KEELRC 2804 (KLR) (5 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2804 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1768 OF 2017  
K OCHARO, J  
OCTOBER 5, 2023**

**BETWEEN**

**SIGNON GROUP ..... CLAIMANT**

**AND**

**KENYA LONG-DISTANCE TRUCK DRIVERS AND ALLIED WORKERS  
UNION ..... RESPONDENT**

**JUDGMENT**

1. This suit was commenced by way of a Statement of Claim dated 4<sup>th</sup> September 2017 wherein the Claimant sought the following orders:-
  - a. A declaration that the strike is unlawful and unprotected.
  - b. An order restraining the Respondent by itself, its officials, agents and/or members from taking part in, calling, instigating or inciting others to take part in an unprotected strike.
  - c. The Respondent to bear the costs of this suit.
  - d. Any other or further orders and/or relief that this Court may deem fit to make and/or grant.
2. In opposition to the Claimant's claim, the Respondent filed a Response to Statement of Claim and Counterclaim. The same was later amended on 10<sup>th</sup> May 2018. In accordance with the rules of procedure, the Claimant responded to the same vide a Reply to Amended Memorandum of Response and Response to Counterclaim.
3. This matter was set down for hearing on 14<sup>th</sup> June 2022. On that day, the Claimant withdrew its Statement of Claim dated 4<sup>th</sup> September 2017. Consequently, only destined for hearing inter partes.



### **Claimant's case**

4. The Claimant avers that on or about 24<sup>th</sup> April 2017, it executed a Recognition Agreement with the Respondent thereby giving the Respondent mandate to engage the Claimant on matters relating to the Claimant's employees' welfare. The parties entered negotiations on a proposed Collective Bargaining Agreement (CBA) between them and scheduled a meeting on 15<sup>th</sup>-16<sup>th</sup> June 2017 to discuss the same. The meeting did not take place as the Respondent's General Secretary was ill. The parties later met on diverse dates namely 25<sup>th</sup> July 2017 and 28<sup>th</sup>-29<sup>th</sup> August 2017, and agreed on most of the items for discussion leaving only 7 items.
5. Having reached a deadlock on the 7 items, the parties agreed to seek the assistance of the Labour Office per the Recognition Agreement, and the Claimant sent out a memorandum to its employees in that regard.
6. The Claimant contends that to its utter shock, on 30<sup>th</sup> August 2017, the Respondent engaged the Claimant's employees in an illegal strike without issuing notice, barely a day after the last meeting where parties had agreed to engage the labour office. Before going on strike, the Respondent did not report any dispute to the Ministry of Labour as required by the law.
7. The Claimant states that the illegal withdrawal of labour and industrial action was in total disregard of Sections 62, 76 and 78 of the [Labour Relations Act](#) 2007.
8. The Claimant assert that its continued operations are in the best interest of the Respondent and its members as they draw their wages and salaries therefrom. That the Respondent's action of resorting to industrial action was malicious, and in bad faith, as it was intended to hamper the smooth operations of the Claimant without caring about its consequential negative effect both on the Claimant and its employees.

### **Respondent's case**

9. In its Amended Response to Statement of Claim dated 10<sup>th</sup> May 2018, the Respondent denies agreeing with the Claimant to seek the assistance of the labour office on the items in the proposed CBA that the parties were unable to agree on.
10. The Respondent categorically and vehemently denies that it caused the Claimant's employees to go on strike. It is the Respondent's position that if at all the Claimant's employees went on strike, then the Claimant must have provoked them to do so. The Respondent cannot be blamed for a consequence flowing from mistakes, or failures on the part of the Claimant to listen to and handle their employees' grievances.
11. The Respondent has never issued any strike notice to the Claimant, Ministry of Labour or its members and as such, is not aware of the alleged strike. The Claimant's employees thus should be held liable for any losses suffered by the Claimant.
12. The Respondent further contend that it was not in a position to call off a strike that it did not initiate in the first place. In the situation, all it could was to try and negotiate with its union members for a suitable solution to put to rest any misunderstandings that may have arisen resulting in the alleged strike.
13. The Respondent alleges support of the counterclaim that the Claimant is dismissing, victimizing, threatening and/or evicting workers for being members of the Respondent union. Further, it has; refused to sign a CBA with the Respondent despite several meetings and negotiations; to fully remit the monthly union dues to the Respondent contrary to Section 48 (2) and 50 of the [Labour Relations Act](#)



2007; and un-procedurally induced unionized members to withdraw their union membership contrary to Section 5 of the *Labour Relations Act* 2007.

14. The Respondent contends that it recruited about 145 members from the Claimant's employees who indicated a willingness to be members of the Respondent union, out of a total of 181 employees. The Respondent forwarded to the Claimant duly filled and signed check-off forms as required by the *Labour Relations Act*. Subsequently, a Recognition Agreement was signed on or about 24<sup>th</sup> April 2017 paving the way for negotiations on a CBA.
15. After several meetings and negotiations, parties could not agree on the CBA terms and as such agreed to sleep over it for a while. The Respondent states that it informed its members of the non-agreement between parties on the CBA and urged them to be patient as they tried to negotiate further on the same.
16. The Respondent states that shockingly, on 5<sup>th</sup> September 2017, it was served with an order from the Honourable Court restraining it and its members from going on strike and ordering them to return to work.
17. The Respondent prays that its Counterclaim be allowed and judgment entered thereon for:-
  - a. An order compelling the Claimant to sign the proposed CBA with it;
  - b. An order compelling the Claimant to remit fully to the Respondent the monthly union dues for September and October 2017 amounting to Kshs. 97,600/= and to continue remitting the same every month;
  - c. An order restraining the Claimant, its agents, its officials and servants from inducing, threatening and forcing the Respondent union members to resign/revoke their union membership by forcing them to sign the standard resignation forms provided by the Claimant;
  - d. An order restraining the Claimant by itself, its officials, agents and servants from harassing, dismissing, threatening and/or intimidating its union members;
  - e. An order be issued directing the Claimants to allow all their members/workers free and unconditional ingress to their respective places of work without intimidation;
  - f. An order be issued directing the Claimants in the alternate to prayers 3 and 4 above to pay the workers/union members 12 months' salary for wrongful termination;

Claimant's Reply to Amended Memorandum of Response and Response to Counterclaim

18. In response to the matters raised in the response to its statement of claim, and the Respondent's counterclaim, the Claimant asserted that; the Respondent initiated the illegal strike on 30<sup>th</sup> August 2017 without notice whatsoever; the industrial action was rushed, unlawful and uncalled for and contrary to Sections 62,76 and 78 of the *Labour Relations Act* 2007.
19. On the Counterclaim, the Claimant asserts that it has never refused to deduct and remit union dues to the Respondent; has never induced unprocedurally or otherwise the Respondent's members to withdraw from the union or exercise their right to join and/or remain in a union of their choice; and that the Respondent's members willingly resigned from the union of their own volition with notice to the Claimant, with the result that the Claimant could not deduct and remit union dues.
20. The Claimant contends that the relationship between it and the Respondent has been replete with incidents of incitement on the part of the Respondent. Such an environment is not conducive for peaceful industrial relations which must be characterized with a spirit of mutuality and engagement hinged on social dialogue.



21. The Claimant avers that it recognizes and upholds international labour standards and acceptable conditions of work including but not limited to acknowledging its employees' right of association as enshrined in the Constitution of Kenya 2010.

### **Claimant's Submissions**

22. The Claimant filed submissions dated 30<sup>th</sup> September 2022 wherein they stated that they abandoned their claim when it was substantially overtaken by events. Hence, their submissions herein are in relation to the Respondent's counterclaim.
23. It is the Claimant's submission that the issues for determination are:
- a. Whether the Claimant has victimized, threatened and/or dismissed the union members due to their union membership;
  - b. Whether the Claimant/Employer refused to sign the Collective Bargaining Agreement;
  - c. Whether the Claimant/Employer refused to fully remit the union dues;
  - d. Whether the Claimant/Employer induced the employees to withdraw from the Union.
24. On the first issue, the Claimant submits that no evidence was tendered by the Respondent to demonstrate incidences of victimization and threats to employees, and notably no such employee gave evidence before this Court.
25. That the Respondent's witness confirmed that incidences of dismissal arose from participation in an illegal strike and other forms of gross misconduct warranting disciplinary action. None of the dismissals were associated with union activities.
26. It is the Claimant's submission that the Respondent has not met the antecedents that must be met before a Court makes a declaration that a dismissal was unfair and illegal.
27. On the second issue, the Claimant submits that it had the right to freely negotiate terms of service without compulsion per ILO Convention 98.
28. The Claimant submits that Section 57 (1) of the Labour Relations Act makes reference to "concluding a Collective Bargaining Agreement" but the CBA in question had not been concluded, as admitted by the Respondent's own witness who stated that there was a deadlock on some clauses which parties had agreed to refer to the labour office for conciliation.
29. That parties are required to attempt conciliation under Section 57(5) where parties have not concluded a CBA. Reference to adjudication in Court applies to a situation where parties have reached a deadlock in negotiations not for signing a CBA under Section 57 (6) of the Labour Relations Act.
30. That the Union did not demonstrate that parties had concluded the CBA. It didn't furnish the Court with the CBA, Minutes showing a conclusion and agreement on all the clauses and correspondence inviting the other party to sign.
31. On the third issue, it is submitted by the Claimant that the Respondent's witness admitted that it received and continues to receive union dues from 28 employees of the Claimant. The names of the employees are exhibited on page 28 of the Respondent's bundle of documents.
32. That the remainder of the Respondent's Bundle of Documents contains resignation letters from the Union. That the Claimant cannot deduct union dues from employees who have expressed unwillingness to be associated with a Union.



33. The Claimant states that the Respondent failed to show that the resignation letters from the employees were countermanded or withdrawn. Further, the Respondent did not prove through bank statements that it was not receiving dues from the Claimant, and how much was owed to them.
34. That the Honourable Court cannot be reduced to a debt collector. In a claim like the Respondent's, the Respondent was enjoined to render specifics. The Court cannot afford to give an ambiguous order flowing from the manner the counterclaim is couched.
35. On the fourth issue, the Claimant submits that the Respondent has not tendered any evidence to demonstrate that the Claimant/Employer induced or interfered with its employees' right to join a Union of their choice or withdraw from the Union.
36. On the prayer that the Respondent's members, be allowed free ingress into their workplace, is not supported by any evidence. The Court cannot therefore make any order in favour of the Respondent in that regard.
37. On the strength of its submissions, the Claimant urges this Court to dismiss the counterclaim.

### **Respondent's Submissions**

38. The Respondent filed submissions dated 22<sup>nd</sup> June 2022.
39. The Respondent submits that the Claimant should be compelled to sign the proposed CBA with the Respondent as it already has a Recognition Agreement with it. It is the Respondent's position that once a recognition agreement is in place, the employer is required to conclude a CBA with the union on the terms and conditions of service of all unionisable employees, per Section 57 (1) of the [Labour Relations Act](#). The Respondent states that the several meetings and negotiations have not yielded a concluded CBA.
40. On whether the Claimant should be compelled to remit union dues to the Respondent, the Respondent submits that the Claimant has a valid Recognition Agreement with the Respondent which binds the Claimant to deduct and remit union dues to it. The Respondent relies on Kenya National Union of Nurses Deduction of Union Dues 2018, to support this point. Further, the refusal and neglect by the Claimant to make union dues deductions amounts to breach of contract and wanton impunity.
41. On the issue of whether the Claimant should be ordered to refrain from inducing, threatening and forcing the Respondent's union members to resign/voke their union membership by forcing them to sign the standard resignation forms provided by the Claimant, the Respondent submits that unionization is a right under Article 41 of [the Constitution](#) of Kenya and Under Section 48 of the [Labour Relations Act](#) 2007, which should be enjoyed by all without hindrance.
42. The employer should not punish, intimidate, threaten, victimize, or in any manner discharge an employee seeking to enjoy their right to unionise. Doing so would derogate from the Bill of Rights. The importance of unionisation is emphasized in the preamble to the [Labour Relations Act](#).
43. It is the respondent's submission that Sections 48(6)-(8) of the [Labour Relations Act](#) require an employee and member of a trade union, where they have resigned from the trade union, to inform the employer in writing. The employer then has to inform the trade union of this fact and stop trade union deductions in the subsequent months. The notice to resign must therefore come from the employee, be submitted to the employer, and then forwarded to the Union.



44. The Respondent notes that the purported resignation letters are addressed to the trade union contrary to Section 48 (6) of the [Labour Relations Act](#). Further, they are all dated the same day, 1<sup>st</sup> September 2017. The Respondent states that the Claimant's employees are all long distance truck drivers so it was practically impossible for them to resign on the same day. No doubt the resignation letters are not authentic. The said resignation letters were procured by threats, intimidation and harassment by the Claimant. This can be seen from the resignation letter of Willy Lagat dated 31<sup>st</sup> August 2017. In the letter, the member's employment was terminated on grounds of participation in an illegal strike.
45. The respondent concludes by stating that the Claimant is engaging in unfair labour practices and does not wish to conclude a CBA with favourable terms and conditions for its employees. It urges the Court to grant the prayers sought and uphold Section 54 (1) of the [Labour Relations Act](#) 2007.

### **Issues for Determination**

46. Having reviewed the pleadings, evidence and submissions herein, I find that the issues for determination are as follows: -
- a. Whether the Claimant should be compelled to sign the proposed CBA with the Respondent;
  - b. Whether the Claimant should be compelled to deduct and remit to the Respondent the union dues for September and October 2017 amounting to Kshs. 97,600/= and to continue remitting the same each month;
  - c. Whether the Claimant, its agents its officials and servants should be restrained from inducing, threatening and forcing the Respondent to resign/revoke their union membership;
  - d. Whether the Claimant by itself, its officials, agents and servants should be restrained from harassing, dismissing, threatening and/or intimidating the Respondent's Union members;
  - e. Whether the Claimant should be ordered to allow all its workers free and unconditional ingress to their respective places of work without intimidation;
  - f. Whether the Claimant should be ordered to pay its workers/union members 12 months' salary for wrongful termination.

#### **a. Whether the Claimant should be compelled to sign the proposed CBA with the Respondent;**

47. It is not in dispute that the parties herein executed a Recognition Agreement dated 24<sup>th</sup> April 2017. It is also not in dispute that the parties did not conclude a Collective Bargaining Agreement as they appear to have disagreed on 7 items. Unfortunately, neither party has stated what the specific items that were disagreed were.
48. The requirement that an employer and a trade Union who have entered into a Recognition Agreement negotiate and conclude a Collective Bargaining Agreement is set out under Section 57(1) of the [Labour Relations Act](#) No. 14 of 2007. It provides:

“57. Collective agreements

(1) An employer, group of employers or an employers' organisation that has recognised a trade union in accordance with the provisions of this Part shall conclude a collective agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.”



49. Collective bargaining is the process used by employers and trade unions to negotiate a collective agreement. Bargaining denotes the method of reaching an agreement. It involves proposals and counter proposals, offers and counter offer. The outcome of the collective bargaining process is a collective agreement. So, where the bargaining hasn't yielded an agreement covering all the areas of negotiations, seldom can the court accede to an invitation by one of the parties to compel the conclusion of the Collective Bargaining Agreement. An obligation to conclude a collective bargaining agreement cannot be imposed on the parties. None of the parties is obligated to accept any particular contractual provisions.
50. In *Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others* [2015] eKLR, the Court eloquently stated;
- “It is my considered view that collective bargaining is neither compulsory nor automatic. It is the source of voluntarily negotiated terms and conditions of service for employees. Collective bargaining is a platform upon which trade unions can build to provide more advantageous terms and conditions of service to their members. *The Constitution* in Article 41 (5) recognizes the right to engage in collective bargaining. The right is founded on the concept of social dialogue, freedom of contract and autonomy of parties in collective bargaining. Article 41 (5) recognizes that collective bargaining is the preferred method of determining terms and conditions of employment. The Article emphasizes the ability of the employer and trade unions to operate as partners rather than adversaries.”
51. Where the parties are unable to agree on terms of a proposed CBA, the first port of call in their attempt to unlock the stalemate should be conciliation. see *Kenya Tea Growers Association v Kenya Plantation & Agricultural Workers Union* [2018] eKLR. Any action that bypasses the conciliation process shall be held premature. I hold that the order sought under this head is premature.
52. For the above reason, I decline the prayer to compel the Claimant/employer to sign the proposed CBA with the Respondent.

**b. Whether the Claimant should be compelled to deduct and remit to the Respondent the union dues for September and October 2017 amounting to Kshs. 97,600/= and to continue remitting the same every month.**

53. The existence of the Recognition Agreement which was executed by both parties on 24<sup>th</sup> April 2017 is not in dispute. Under Section 54(1) of the *Labour Relations Act*, for a Union to enter into a Recognition Agreement with an employer, it must represent a simple majority of the unionisable employees of the employer, that is, 51% of the unionisable employees. It therefore follows that Section 48(3) of the *Labour Relations Act* applies. Section 48 (2) and (3) provide that:-
- “(2) A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to—
- (a) deduct trade union dues from the wages of its members; and
- (b) pay monies so deducted—
- (i) into a specified account of the trade union; or
- (ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.



- (3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.

54. In the present case, the Respondent has stated that it recruited 145 of the Claimant's employees, out of a total of 181 employees. This represents 80% of the Claimant's unionisable employees. The Claimant doesn't contest this fact. However, the Claimant asserted that the recruited members through time resigned their membership. At the material time, only 28 employees were members of the Respondent Union. It placed forth resignation letters by the members to show this.

55. Sections 48 (6)-(8) of the *Labour Relations Act* No. 14 of 2007 are categorical that union dues should be deducted and remitted to a trade union, save where the employees who are members of the union have resigned as members. They state: -

“ 48.

- (6) An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.
- (7) A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.
- (8) An employer shall forward a copy of any notice of resignation he receives to the trade union.”

56. I have perused the Claimant's List of Documents filed before this Court on 11<sup>th</sup> May 2018. I note that on 18<sup>th</sup> October 2017, the Claimant/Employer forwarded to the Respondent vide a letter dated the same day two cheques for the sums of Kshs. 11,200 and Kshs. 3,360 in favour of the Respondent and COTU as union dues. They also forwarded a list of members of the Union as at 30<sup>th</sup> September 2017. As per the attached list, only 28 employees were members of the Union as at that date.

57. The remainder of the Claimant's List of Documents is comprised of resignation letters from the remaining members of the Union. The allegation that all the letters are dated the same date is not true. The dates on the resignation letters range from 30<sup>th</sup> August 2017 to 3<sup>rd</sup> October 2017. The Respondent states that the addressee of the resignation letters, being the National General Secretary of the Union, rather than the employer, renders the letters suspicious and invalid. I do not agree with this submission, as the addressee of the resignation letters does not affect the substance thereof.

58. Further, the Respondent has not alleged, or proved, that the signatures on the resignation letters are forgeries, or adduced before this Court documentary or oral evidence by the individual employees disowning the resignation letters.

59. Having found that the resignation letters are valid, and considering that the Claimant/Employer did indeed remit union dues for the remaining employees for October 2017, I decline to award the Respondent the sum of Kshs. 97,600/- as claimed by the Respondent.

60. I am cognizant of Section 48 (7) of the *Labour Relations Act* which provides that remittance of union dues ought to be stopped on the following month of the resignation of an employee from the



membership of a trade union. Having found as I have hereinabove that a majority of the Respondent resigned, it was imperative that it with specificity sets out and proves the unremitted sums for September 2017. This it did not do. I therefore cannot make a finding on the remittance of Union dues for September 2017.

**c. Whether the Claimant, its agents its officials and servants should be restrained from inducing, threatening and forcing the Respondent to resign/ revoke their union membership;**

61. It is the Respondent's position that the Claimant/Employer induced, threatened and forced their employees from resigning from their membership in the Respondent union.
62. However, I note that no evidence is tendered to prove the alleged inducement, threats and or force visited on the employees by the Claimant.
63. Sections 107 and 109 of the Evidence Act Cap 80 of the Laws of Kenya place a burden on the person alleging to prove the alleged facts or matters. Certainly, the Respondent did not discharge this burden of proof. No material has been brought forth to demonstrate the existence of the alleged threats and how they were executed, that the resignation letters were forgeries [this court has not lost sight of the fact that an allegation of forgery is a serious allegation as forgery is a felony.] and how the alleged inducement occurred. In the absence of the evidence, I consider the assertions to be bald.
64. The Respondent has produced and referred to a Summary Dismissal Notice of one Willy Lagat dated 31<sup>st</sup> August 2017, and pointed to the fact that one of the grounds for termination is "Participated in an illegal strike". The Respondent alleges that this is a retaliatory action not to be sanctioned in the face of constitutionally inspired unionism.
65. It does not escape this Court's notice that the Respondent vehemently denies issuing a notice for the strike by the Claimant's employees on 30<sup>th</sup> August 2017, being aware of the same, and/or facilitating the same. Further, in its own words, it stated that employees who engaged in an unlawful strike should carry the burdens consequent to their engagement in the strike.
66. Pursuant to Section 76 of the Labour Relations Act, 2007 protected strikes and lock-outs allowed. The said Section states:-

- "76. Protected strikes and lock-outs a person may participate in a strike or lock-out if—
- (a) the trade dispute that forms the subject of the strike or lock-out concerns terms and conditions of employment or the recognition of a trade union;
  - (b) the trade dispute is unresolved after conciliation—
    - (i) under this Act; or
    - (ii) as specified in a registered collective agreement that provides for the private conciliation of disputes; and
  - (c) seven days written notice of the strike or lock-out has been given to the other parties and to the Minister by the authorised representative of—
    - (i) the trade union, in the case of a strike;
    - (ii) the employer, group of employers of employers' organisation, in the case of a lock-out."



67. In the case of *Joash Alubale Jacob v Mega Pack Limited* [2019] eKLR it was held that: -

“a trade union must issue notice of not less than 7 days to the employer before engaging in a strike. without such notice the strike is unprotected. Further even where a notice has been issued in accordance with section 76 of the *Labour Relations Act, 2007* before going on strike the party relying on the same must show efforts taken to engage in conciliation and that despite taking such efforts the matter was referred to the court and the court has allowed and or sanctioned such action.

The provisions of section 76 of the *Labour Relations act, 2007* are mandatory. See the case of *Inter-Public Universities’ Councils Consultative Forum of Federation of Kenya Employers versus Universities’ Academic Staff Union & 5 others* [2018] eKLR.

So serious is a matter where there is no compliance with the provisions of sections 76 and 78 of the *Labour Relations Act, 2007* as the resulting action is summary. An employee who takes part in a strike or calls for a strike or incites others to take part in a strike and which strike is not with notice and such matter has not gone for conciliation and upon such conciliation there is no reference to the court for approval, the strike being unprotected attract disciplinary action. Section 80 of the *Labour Relations Act, 2007* is important to restate verbatim as follows;

80.

- (1) An employee who takes part in, call, instigates or incites others to take part in a strike that is not in compliance with this Act is deemed to have breached the employee's contract and-
  - a. is liable for disciplinary action; and
  - (b) is not entitled to any payment or any other benefit under the *Employment Act* during the period the employee participated in the strike.”

68. In the present case, I have already concluded that the dispute between the employer and the trade union was not referred to conciliation. Further, no notice of the strike which was held on 30<sup>th</sup> August 2017 was given to the employer. As such, the strike was an unprotected strike meaning that the Claimant was well within its rights to summarily dismiss employees who took part in it. In line with the foregoing, the summary dismissal of the culpable employees alone cannot be considered intimidation, harassment, inducement or threats.

69. I therefore decline to grant prayer 4 of the Respondent’s counterclaim.

d. Whether the Claimant should be ordered to allow all its workers free and unconditional ingress to their respective places of work without intimidation.

70. Save for prayer 6 of the Respondent’s counterclaim, the Respondent does not plead or adduce evidence to the effect that its members are being denied entry to their workplace.

71. It is trite law that parties are bound by their pleadings. As such, I shall not pronounce myself on this issue.

**d. Whether the Claimant should be ordered to pay its workers/union members 12 months’ salary for wrongful termination.**

72. The Respondent, again, makes a prayer that this Court makes a declaration that its members were wrongfully terminated, but does not plead wrongful termination of any specific individual member



or employee. The lack of specificity poses a great challenge for this court interrogating and rendering itself on the alleged wrongful termination.

73. In the absence of a pleaded claim and evidence to support it, this Court will not express itself on this issue, save to state that the summary dismissal of the employees/members who participated in the unprotected strike was justified and lawful as explained in paragraphs 71-75 hereinabove.

74. For the above reasons, I hereby dismiss the Respondent's Counter claim dated 10<sup>th</sup> May 2018, with costs to the Claimant/Employer.

75. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5<sup>TH</sup> DAY OF OCTOBER, 2023.**

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**OCHARO KEBIRA**

**JUDGE**

**In the presence of:**

**Mr. Cheruiyot for the Claimant**

**Mr. Ouma for the Respondent**

**ORDER**

**In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.**

**A signed copy will be availed to each party upon payment of Court fees.**

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**OCHARO KEBIRA**

**JUDGE**

