



Green Line Sacco Limited v Cabinet Secretary, Ministry of Labour and Social Protection & another (Petition E072 of 2023) [2023] KEELRC 3104 (KLR) (27 November 2023) (Judgment)

Neutral citation: [2023] KEELRC 3104 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E072 OF 2023
B ONGAYA, J
NOVEMBER 27, 2023**

BETWEEN

GREEN LINE SACCO LIMITED PETITIONER

AND

**CABINET SECRETARY, MINISTRY OF LABOUR AND SOCIAL
PROTECTION 1ST RESPONDENT**

COMMISSIONER FOR LABOUR 2ND RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated 17.04.2023 through M/S Ojienda & Company Advocates. The petitioner prayed for orders as follows:
 - a. That there be a declaration that the petitioner’s fundamental rights and freedoms as enshrined under Articles 27 and 47 of the Constitution of Kenya 2010 as read with the provisions of the Fair Administrative Action Act 2015, have been contravened and infringed upon by the respondents by their decision to without justification to conduct inspection audit upon the petitioner’s Nairobi offices.
 - b. An order of certiorari be issued to bring to the Court and quash the decision of the respondents vide a letter dated 11.04.2023 to conduct a labour inspection audit in the petitioner’s offices in Nairobi.
 - c. An order of prohibition be issued to prohibit the respondents by themselves and or their agents in any way from conducting a labour inspection audit without justification.
 - d. The costs of the petition.
2. The petition was based upon the supporting affidavit of John Waithaka Thuo sworn on 17.04.2023 and exhibits thereto filed together with the petition. The petitioner’s case is as follows:



- a. That the petitioner has been carrying out business since incorporation in its offices in Nairobi. That on or about November, 2022 a trade dispute arose between the petitioner and one Mr. Joseph Muthama Kalandi who is a member of Transport Workers Union about his employment with the petitioner.
 - b. That the matter was then referred to the respondents to which a conciliator was appointed to oversee the negotiations and have the dispute resolved.
 - c. The parties were invited to a meeting on 09.03.2023 and they both attended. That during the negotiations the disputed claims remained unresolved. However, the conciliator went ahead to make a finding that the petitioner was liable to pay Mr. Joseph Muthama his terminal dues and further issue him with a certificate of service.
 - d. That on 11.04.2023 the 1st respondent through the 2nd respondent wrote to the petitioner, indicating that they will be conducting a labour inspection audit in its Nairobi offices on 18.04.2023 giving it only seven days' notice.
 - e. It is the petitioner's case that the letter dated 11.04.2023 was in bad faith and actuated with malice having been made after the negotiations failed to reach an amicable settlement.
 - f. That the mandate to inspect the petitioner's offices is a reserve of the labour office whose appointment is under section 30(2)(a) and which is made by the 1st respondent and such powers cannot be delegated to any labour officer by the 2nd respondent as provided for under section 35(1) of the *Labour Institutions Act*, 2007.
 - g. That the 2nd respondent has acted *ultra vires* its powers in delegating such duties to another labour officer as they are vested expressly in the Act.
3. The 1st and 2nd respondent filed the replying affidavit sworn on 31.10.2023 by Hellen Apiyo, the Commissioner of Labour in the Ministry of Labour and through the learned Deputy Litigation Counsel Daniel O. Oure for the Hon. Attorney General. It was stated and urged as follows:
- a. That the petitioner intentionally refused to honour the terms of the conciliation process by their refusal to pay Joseph Muthama Kalandi his terminal dues.
 - b. That section 30(1) (a-c) states that the Minister may designate officers appointed under subsection (1)(c) who include Commissioner for Labour, Director of Employment and other Labour Officers to conduct administration and inspection for purposes of the *Act*.
 - c. That under the *Employment Act*, 2007 a labour officer is defined to mean a person appointed as the Commissioner for Labour, a Senior Deputy Commissioner for Labour, Chief Industrial Relations Officer, a Deputy Chief Industrial Relations Officer, a Senior Labour Officer, an Industrial Relations Officer or Labour Officer all of whom the Act mandates them legally to audit and inspect the petitioner.
 - d. That under section 35(1) (a) to (m) of *Labour Institution Act*, 2007 a Labour Officer has numerous powers listed therein among them the auditing and inspection of the petitioner as required by the law.
 - e. That under section 35(1) of the *Labour Institutions Act*, 2007 a labour officer under the Act has been bestowed with more powers including to require person giving out work to provide any information which may be within the power of that person.



- f. That under section 74(2) of the *Employment Act*, 2007 the labour officer may demand all records as in section 74(1) which records under the law shall be provided for inspection and audit.
- g. That both the *Labour Institutions Act* 2007 and *Employment Act* 2007 give the labour officer power at any reasonable time to enter, inspect and examine any building in which he has reasonable ground to believe that an employee is residing and/or is employed and may make such inquiry, inspection and examination as may be necessary to enable him determine as to whether the provisions of the law are complied with.
- h. That the Honourable Court cannot issue an order of certiorari to quash the respondent's statutory mandate on a matter where the petitioner has issues touching the law nor can the Court issue an order of prohibition to prohibit the respondent from discharging its mandate as provided by the law for purposes of shielding the petitioner's violation of the provisions of the law.
4. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows.
5. To answer the 1st issue, the petitioner has not rebutted any of the provisions of law set out in the replying affidavit that empower the respondents by themselves or by the officers enumerated from undertaking the kind of the inspection subject of the instant dispute.
6. To answer the 2nd issue, as submitted for the respondents, the Court cannot issue the kind of orders as prayed for with the consequence that the respondents are thereby barred from undertaking their lawful duties and functions as provided in the various statutes as stated in the statutory provisions referred to in the replying affidavit.
7. To answer the 3rd issue, the inspection notice was properly issued within the statutory authority of the respondents. It was not ultra vires or unlawful or outside jurisdiction or in breach of the rules of natural justice or fair administrative action as envisaged in Article 47 of the *Constitution*. As submitted for the respondents, the petitioner has not set out how the respondents have violated Articles 27 and 47 of the *Constitution*. The decision to inspect the petitioner's premises was not shown to have been discriminatory as it was a decision made by the respondents in their ordinary or routine work and as was authorised by the relevant statutory provisions duly cited for the respondents. The respondents have succeeded and the petitioner is liable to pay costs. None of the reliefs prayed for has been shown to be justifiable.
8. In conclusion, judgment is hereby entered for the respondents for dismissal of the petition with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 27TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

