



**Kenya Shipping, Clearing Freight Logistics and Warehouses Workes Union
v Vegpro (K) Ltd VP Group (Employment and Labour Relations Cause
E1031 of 2021) [2023] KEELRC 3122 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3122 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E1031 OF 2021
AN MWAURE, J
NOVEMBER 24, 2023**

BETWEEN

**KENYA SHIPPING, CLEARING FREIGHT LOGISTICS AND WAREHOUSES
WORKES UNION CLAIMANT**

AND

VEGPRO (K) LTD VP GROUP RESPONDENT

RULING

1. The respondent filed a Preliminary Objection dated July 10, 2023 in opposition to the claimant's claim dated December 1, 2021 on grounds that:
 - 1) the claimant's claim dated December 1, 2021 has been filed in contravention of section 54 of the *Labour Relations Act, 2007*.
 - 2) The claimant does not have a Recognition Agreement with the respondent within the meaning of section 54 of the *Labour Relations Act* to enable the claimant represent the respondent's employees.
 - 3) Section 54 of the *Labour Relations Act* sets the threshold that a union must meet to be recognised by an employer. It is the recognition agreement that entitles the union to conduct lawful activities in the premises of the employer including negotiating terms and conditions of all unionisable employees of the employer.
 - 4) The recognition agreements sets out the parameters of engagement between the union and the employer including negotiating, grievance and disciplinary procedures.



- 5) Without a recognition agreement by an employer, a trade union even where registered to represent workers in a sector, remains a bystander to the disputes between workers and their employers.
- 6) A union that is not recognised by a particular employer has no legal mandate to commence a suit on behalf of the employees of the said employer. Such union cannot represent the unionisable employees of the specific employer in a dispute between the employer and its employees.
- 7) The claimant therefore lacks locus standi to lodge the Memorandum of Claim as it does not have a Recognition Agreement with the respondent in terms of section 54 of the [Labour Relations Act](#).
- 8) In due regard to the foregoing, the Claim is incompetent, bad in law, defective and an abuse of the court process as this honourable court is not seized of the jurisdiction to hear and determine the claim in respect of the said issues raised in this claim.

Submissions

The court considered the claimants submissions dated September 19, 2023.

Analysis and Determination

2. The main issue for determination is whether the preliminary objection is merited.
3. The respondent/applicant submitted that in the absence of a recognition agreement, the claimant lacks standing to represent the grievants in this suit and has no legal mandate to commence a suit on behalf of the employees. The court is aware that if grievants are members of a union they are entitled to be represented by the said union lack of a collective bargaining agreement notwithstanding. However in the case of [Kenya Shoe and Leather Workers Union vs Moderd Soap factory](#) (2018) eKLR the court held:

“we can see no reason therefore to fault the conclusion by the judge that the respondent has no *locus standi* to institute the claims as to whether an employee is a member of a union, evidence would be required to settle that question. It is not a matter that is amenable for determination on the basis of preliminary objection.”
4. The requirement for a recognised collective bargaining agreement is not requisite for representative of members but the members should prove they are members of the union. There is no evidence tendered to that effect in this case.
5. Furthermore, the claimant submitted that the preliminary objection is not competent as it raises unarguable and contested positions which requires interrogations by this court and are not pure points of law.
6. The threshold to be met by a preliminary objection was set out in the Court of Appeal in the case of [Mukhisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd](#) [1969] EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say:

“....A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of



limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

At page 701 paragraph B-C Sir Charles Newbold, P. added the following:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion....”

7. Further, in *[Kepher Oguwi Langi v Kenya Union of Post Primary Education Teachers \(KUPPET\) & 3 others](#)* [2020] eKLR the court held:

“For a preliminary objection to pass the set standards, the facts it relies upon must not be contested ...

The issues raised by the claimant cannot be canvassed by way of preliminary objection as evidence must be interrogated to establish whether the assertions, he has made are indeed true.”

8. The grounds of preliminary objection relied on by the applicant have been contested by the claimant which submitted it does not require a recognition agreement or collective bargaining agreement to represent its members in trade disputes and suits in a court of law as representation is a constitutional right.

9. The issues raised cannot be canvassed by way of preliminary objection as it does not raise pure points of law and issues raised therein can be argued in detail during the hearing of the main suit. The issues raised must therefore be litigated as they are not pure points of law.

10. The preliminary objection raised is therefore not merited and must be dismissed.

11. Costs will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 24TH DAY OF NOVEMBER, 2023.

ANNA NGIBUINI MWAURE

JUDGE

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 15th March 2020 and subsequent directions of 21st 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.

ANNA NGIBUINI MWAURE

JUDGE

