



Kenya Union of Commercial, Food and Allied Workers v Kiambu (Cause 1363 of 2018) [2023] KEELRC 2939 (KLR) (17 November 2023) (Judgment)

Neutral citation: [2023] KEELRC 2939 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1363 OF 2018
B ONGAYA, J
NOVEMBER 17, 2023**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
GALOT ESTATE KIAMBU RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim on 06.09.2018. The claimant prayed for judgment against the respondent for:
 - a. Reinstatement of the grievant unconditionally
 - b. Damages for loss of earning from the date of termination up to date.
 - c. Costs of the suit in favour of the claimant
 - d. In the alternative and where the reinstatement shall not be the best remedy, the claimant prays that the grievant to be paid the following as his terminal benefits to be based with the London distillers CBA which the grievant has



i. One month's notice		12,920.00
ii. Accrued annual leave	$12,920 \times 28$ 26	13,235.40
iii. Prorata leave for 6 months	$28/12 \times 6 = 13$ days = $12,920/26 \times 13$	6,460.00
iv. Salary for the period they have been out	Nov. 2016 – Jun 2018 = $12,920 \times 20$	258,400.00
v. Service for 4 years	$12,920/26 \times 60 \times 4$	119,261.50
vi. Salary arrears for the CBA 2015/2017	20.5.2016= 20.6.2017=	26,356.80 29,552.20
vii. Payment for public holidays	$12,920/26 \times 10 \times 4 =$	19,876.90
viii. Maximum compensation for wrongful loss of employment	$12,920 \times 12$	155,040.00
Total		641,102.80

2. The statement of response and counterclaim was filed on 07.11.2018 through Gichina Macharia Matotse Advocates. The respondent counter-claimed and prayed for:
 - a. The claim to be dismissed with costs.
 - b. The claimant be condemned to pay damages in the tune of Kshs 1,000,000/= for breach of sound industrial relations.
 - c. A declaration that the termination of William Nyakundi was fair and lawful.
 - d. Any other relief the court deems fit.
3. The claimant's case was that its member, William Nyakundi Makori was employed by the respondent on 23.04.2012 as a general worker, at a starting salary of Kshs 7,586 per month.
4. That his terms and conditions of employment were based on the CBA of London Distillers, the mother company of the respondent.
5. On 29.09.2016 the employee was issued with a termination letter. However, following the intervention of the claimant, the employee was reinstated on 03.10.2016.
6. The letter of reinstatement, indicated that the same would serve as a first warning. Subsequently on 05.11.2016, the employee was issued with another termination letter. However, the respondent had miscalculated his dues.



7. The termination letter referred to an issue that was resolved in June 2016. Aggrieved, the employee reported the matter to the claimant, who took up the matter and referred the same to conciliation.
8. It is the claimant's case that the employee and itself, attended all conciliation meetings. The respondent failed to attend the same.
9. The claimant's case is that the termination of the employee's employment was due to his membership with the claimant.
10. It is stated that the respondent refused to issue the employee with a certificate of service and this has caused him difficulty in trying to secure another job.
11. On the part of the respondent it is argued that the respondent is a privately-owned farm and residence of one, Mohan Galot his family and that the employee, William Nyakundi, was employed to work at the residence, located in Kiambu.
12. The respondent's case is that it does not have a recognition agreement or a CBA with the claimant. The duties of the employee have never been transferred to or reallocated to any entity, during the pendency of his employment. That the activities undertaken at the respondent estate fall outside the jurisdiction of the CBA, and that the respondent have never remitted union and COTU dues with regards to the employee.
13. The respondent states that the employee has never been the claimant's union member and that the claimant has no legal standing to bring the claim on behalf of the employee.
14. The respondent pleaded that the employee was fairly and lawfully terminated and his terminal dues were computed in line with the employment law.
15. The res
16. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
17. The 1st issue is whether the grievant William Nyakundi Marori was a member of the claimant trade union. The claimant has pleaded that there is no recognition or collective agreements between the parties. The claimant has pleaded that by its registered constitution, it represents employees in real estate enterprises which the respondent is engaged in. There is no pleading that the grievant is a member of the union. While there is no recognition, the recognition dispute is before conciliator but the employees of the respondent have been benefiting from the collective agreement in place. The letter of appointment is dated 19.04.2012. It does not refer or incorporate the collective agreement as alleged for the claimant trade union. As submitted for the respondent, the claimant has not shown that grievant for whose benefit the suit was filed was its member. The Court and the Court of appeal have settled that membership is to representation by union whereas collective bargaining is to recognition. Thus, a union cannot institute a suit for or represent a union if the employee said to be aggrieved has not been shown to be a member of the trade union. Even if recognition agreement had not been concluded between the parties, it was important to show that the grievant was a member of the union. The Court finds that the claimant failed to show that important precondition for justifying moving the Court the way it was done. The suit will fail for want of the grievant being a member of the claimant trade union. Confirming doubt about his membership in the union, the grievant testified thus, "I have filed a document to show I was a member of union. I paid union dues. I say no document on record to show I belonged to the union."



18. The statement of claim shows that the claims and prayers were based on a collective agreement that has not been shown to bind the parties. The claimant not being a member of the trade union and there being no binding collective agreement, there is no way the terms in the collective agreement could become incorporated in the claimant's contract of service. The claimant's suit will fail.
19. It is pleaded and submitted for the respondent that it is not a person in law and in view of that position, the counterclaim would as well collapse without more to it. The point being that a no person in law cannot claim and obtain remedies in a Court of law. The Court finds accordingly. There will be no orders on costs.

In conclusion the statement of claim and the counterclaim are dismissed with no orders in costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 17TH NOVEMBER, 2023.**

BYRAM ONGAYA

PRINCIPAL JUDGE

