



Amalgamated Union of Kenya Metal Workers v Cads Motors Ltd (Cause 437 of 2017) [2022] KEELRC 1728 (KLR) (25 May 2022) (Judgment)

Neutral citation: [2022] KEELRC 1728 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 437 OF 2017**

S RADIDO, J

MAY 25, 2022

BETWEEN

AMALGAMATED UNION OF KENYA METAL WORKERS CLAIMANT

AND

CADS MOTORS LTD RESPONDENT

JUDGMENT

1. The Amalgamated Union of Kenya Metal Workers (the union) sued Cads Motors Ltd (the respondent) on December 8, 2017, and it stated the Issues in dispute as:
 - (1) Refusal by the respondent to sign recognition agreement.
 - (2) Refusal to deduct and remit trade union dues to the claimant.
2. The respondent filed a response to the memorandum of claim on July 13, 2018, and this prompted the union to file a reply to the response on January 24, 2019.
3. When the cause came up for hearing on July 17, 2018, the union informed the court that it would not lead any evidence and that it would rely on the memorandum of claim and oral submissions.
4. The union made oral submissions on the same day, and the respondent's case was adjourned to February 7, 2019.
5. After several adjournments, the respondent's case was eventually taken on February 21, 2022.
6. At the close of the hearing, the court directed the County Labour Officer to conduct a ballot amongst the respondent's employees to establish the level of union membership.
7. The County Labour Officer filed a report with the court on March 18, 2022 and on March 21, 2022, the court directed the parties to file and exchange written submissions.



8. The union filed its submissions on April 20, 2022 and the respondent on April 28, 2022.
9. The court has considered the pleadings, evidence, and submissions.

Burden Of Proof

10. The general rule of evidence is that the party asserting the existence of certain facts or state of affairs must place before the court proof of the existence of those facts under oath.
11. The oath may be administered orally in court or through an affidavit filed in court.
12. The union did not lead any evidence either through a sworn witness (or documents) to discharge the burden of proof placed upon it (as the claimant).
13. The mere of filing of documents which are not produced under oath would not suffice. The option the union took not to call a witness should only be exercised where affidavits of evidence have been relied on.
14. In the case at hand, the union relied on the memorandum of claim, the contents of which remain just allegations until evidence in support is produced.

Merits

15. The court also notes that the report of the County Labour Officer established that the Union had not satisfied the threshold set by section 54 of the *Labour Relations Act*.
16. The union must go back to the drawing board and commence fresh recruitment.

Conclusion and Orders

17. The court finds no merit in the cause, and it is dismissed.
18. Because of the anticipated social partnership between the parties, no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 25TH DAY OF MAY 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For union Mr Ondiege, Industrial Relations Officer.

For respondent Ms Atieno, instructed by SB Mbeche & Co Advocates.

Court Assistant Chrispo Aura.

