



Kenya County Government Workers Union v Nairobi Water & Sewerage Co. Ltd; National Union of Water & Sewerage Employee (Interested Party) (Cause E747 of 2021) [2022] KEELRC 1122 (KLR) (27 June 2022) (Ruling)

Neutral citation: [2022] KEELRC 1122 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E747 OF 2021
NZIOKI WA MAKAU, J
JUNE 27, 2022**

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION CLAIMANT

AND

NAIROBI WATER & SEWERAGE CO. LTD RESPONDENT

AND

NATIONAL UNION OF WATER & SEWERAGE EMPLOYEE INTERESTED PARTY

RULING

1. The dispute herein as the Court has been able to understand it is a contest between the Claimant and the Respondent. The Interested Party, seeks alongside the motion by the Applicant to be joined to the proceedings. The Claimant/Applicant's notice of motion seeks in the main for orders:-
 1. Spent
 2. That this Honourable Court be pleased to order the Respondent to remit the deducted trade union dues to the Claimant as per the mandatory provisions of Section 49 of the *Labour Relations Act*, 2007 pending the hearing and determination of this Application.
 3. That this Honourable Court be pleased to order the Respondent to remit the deducted trade union dues to the Claimant in accordance with Section 49 of the *Labour Relations Act*, 2007 pending the hearing and determination of the Claim/suit herein.
 4. That the costs of this application be borne by the Respondent.



2. As regards the motion by the Proposed Interested Party herein, the said Union sought, inter alia, an order that it be enjoined as an interested party in these proceedings. The application by the Proposed Interested Party is based mainly on the ground that the Interested Party's joinder will set the record straight and inform the Court that the Claimant is not the right union representing the Respondent's workers and is thus defrauding the Interested Party of its dues by false pretence. The interested party also cites various orders of this Honourable Court and the Court of Appeal which it alleges the Claimant is in violation of by entering into a recognition agreement with the Respondent Company when it lacked the capacity to do so.
3. The Court directed parties to file submissions and only the Claimant had filed submissions by the time the Ruling herein was prepared. The Claimant asserts that it represents the majority of the Respondent's members. It submits that on the joinder issue that the Intended Interested Party has not met the legal threshold test for joinder and/or admission of an Interested Party. It submits that the guiding principles governing the joinder or admission of an interested party into proceedings are now well settled. It cites the decision of the Supreme Court in *Francis Kariuki Muruatetu & Another v Republic & 5 Others* [2016] eKLR, wherein the Supreme Court while addressing the issue of joinder of an interested party affirmed its own decision in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* [2015] eKLR and held that: -

“.... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

 - i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
 - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.” (emphasis theirs)
4. The Respondent submits that the Intended Interested Party has not demonstrate any of these criteria save for making the application. No demonstration was made of the prejudice it would suffer if not joined and no demonstration was made of sufficiency of interest. It was submitted that the Intended Interested Party's claim is too remote or peripheral and not proximate enough to constitute an identifiable interest in these proceedings. The Claimant thus sought the dismissal of the Proposed Interested Party's claim and motion for joinder.
5. The Claimant submits that it represents the simple majority of the Respondent's unionisable employees, hence it is the right union to receive the trade union dues deducted or collected by the Respondent. It submits that the remittance of union dues by an employer to a Union is a mandatory statutory obligation under Sections 48, 49, and 50 of the *Labour Relations Act*, 2007. And that this is automatically triggered by the submission by the Union of its list of members to the employer in the prescribed form and a Ministerial order to that effect. In *Kenya Concrete, Structural, Ceramic Tiles Wood Plys and Interior Design Workers Union v Wanxin Investments Limited* [2021] eKLR where



the Claimant had made a similar application seeking orders that the Respondent be ordered to effect deduction and remittance of trade union dues and pay trade union dues in arrears, this Honourable Court (Rika, J.) ruled that: -

10. Deduction and remittance of trade union dues flows from relevant ministerial order and check-off forwarded to the Respondent by the Claimant. 34 check-off forms have been forwarded to the Respondent, and receipt acknowledged.
 11. There is no reason for the Respondent not to act on check-off forms, by deducting and remitting trade union dues, relating to undisputed members of the Claimant."
6. It is submitted that in the present application before Court, the Respondent has not disputed the submission of check-off systems by the Claimant Union and the existence of a Ministerial order. Further, the Proposed Interested Party has not shown that it is the Union with the required threshold number of unionisable members as to qualify to sign a Recognition and CBA with the Respondent Company, even though these are issues we humbly submit cannot be ventilated upon by this Honourable Court at this interlocutory stage. Be that as it may, the fact that the Claimant has a valid Recognition Agreement and a subsisting CBA with the Respondent binds the Respondent to deduct union dues from its members and remit the same to the Union, which it has failed, neglected, and/or refused to do.
7. It is submitted that the Respondent's failure to remit the union dues deducted from the Claimant's members is an affront on the Claimant's Constitutional right under Article 41(4)(a) & (b) of *the Constitution* to determine its own activities and to organize. It also amounts to a violation of the Claimant's members' Constitutional rights under Articles 360(1) and 41(2)(c) of *the Constitution* to associate by joining and participate in the activities of a trade union in that it limits and/or restricts the members' right to dispose of their wages in the manner they wish and to a union of their choice. In support of this submission, the Respondent refers to the holding in *Kenya National Union of Nurses v Busia County Public Service Board & Busia County Government* [2020] eKLR wherein the Court held that where an employer fails to deduct union dues, that: -
17. The decision of the county government signified through its letter of 14 August 2020, in the view of the court, was a direct assault on the constitutional rights of employees as individual to associate.
 18. Apart from the employee's right to associate, it would be abhorrent to our constitutional democracy to restrict and/or limit an employee's right to dispose of his wages in any lawful manner he so wishes.
 19. According to the court, the decision of the county government was as well a calculated measure to weaken the union and thus a subtle attack on the right of the union to determine its own administration, programmes and activities, and to organize, and direct challenge to Articles 41(4 (a) & b) of *the constitution*.
 20. The county government must be aware too that where it fails to deduct and submit trade union dues, it may be ordered under the relevant provision of the Labour Relation Act to pay such trade union dues from its own resources,
 21. The county government has and should not have any interest on how its employees dispose of their wages (employers do not make any part contribution in respect of trade union dues)... "



8. The Claimant submits that in *Julia Mwenje Nyinkuri v Kenya County Government Workers Union* [2021] eKLR, this Honourable Court (Mbaru, J.) held that: -

“The right to belong to a trade union of choice is further secured under section 52 of the LRA which allow a given employee to join a trade union of choice and to pay directly to such trade union so as to enjoin representation and unionisation under such trade union of choice.”

9. The employees of the Respondent have a right to join a union of their choice. However, the right to join a union does not mean they can join any union. It has to be the union covering the sector. In the decisions of the Court, the Claimant is clearly the interloper in the matter before me. This Court, per Onyango J. in *Kenya County Government Workers Union v Nairobi Water and Sewerage Company Limited & National Union of Water and Sewerage Employees* [2021] eKLR held

“.....the Court of Appeal in the ruling of February 16, 2018. The obtaining position is therefore that stated in the decision of the (then) Industrial Court in C.A No. 213 of 2010 and upheld in Cause No. 439 of 2010 to the effect that KLGWU (now KCGWU) should delete the phrase "and the Councils' Water Companies" from its CBA and that NUWASE was the appropriate union for employees of Water Companies. In Cause 439 of 2010, the Court specifically restrained KLGWU from purporting to represent or hold itself out as an agent of the employees, recruiting or dealing with employees of water companies in any manner.

From the foregoing, it is clear that the recognition agreement dated February 18, 2013 between KCGWU and Nairobi Water and Sewerage Company Limited was in violation of the explicit decisions of this court in Cause 439 of 2010 and CA No. 213 of 2010. The same was therefore null and void. The subsequent CBA registered as RCA No. 224 of 2015 which was consequent upon the said recognition agreement is therefore also tainted.

.....

The employer herein the Nairobi Water and Sewerage Company operates in the Sector covered by the NUWASE.

It does not operate under the County Governments which is covered by KCGWU. Further, as already observed, the Court in Cause 439 of 2010 and in C.A. 213 of 2010 directed the KCGWU to remove water companies from its area of operation. In view of the confirmation of these decisions by the Court of Appeal decision in Civil Appeal No. 18 of 2013, the KCGWU has no right to cover employees in the water services sector. "

10. The Court is persuaded by these decisions of the Court and the Court of Appeal that the Claimant has no business representing the members of the Respondent notwithstanding the fact that there was a CBA registered. As indicated in prior Rulings of this Court and the Court of Appeal that is neither here nor there and as such the Claimant should leave the business of representation of the employees of the Respondent which operates in the water sector to the appropriate union which is NUWASE the proposed interested party. As such the suit before the Court is a complete waste of precious judicial time as well as a blatant abuse of the court process the Court of Appeal having made a determination which has been reinforced by the Principal Judge of this Court. The decision of the Court of Appeal and that of Onyango J. are clear, the Claimant as having no locus standi here as the matter of union dues is not within its mandate. The suit is dismissed with costs to the Respondent.



11. Since there is no suit, there is no need to join the Interested Party to the cause.
It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2022

NZIOKI WA MAKAU

JUDGE

