



**Kenya Building Construction, Timber & Furniture Industries
Employees Union v Zhonghao Overseas Engineering Co Ltd (Cause
E133 of 2022) [2022] KEELRC 1545 (KLR) (4 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1545 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E133 OF 2022
AN MWAURE, J
AUGUST 4, 2022**

BETWEEN

**KENYA BUILDING CONSTRUCTION, TIMBER & FURNITURE INDUSTRIES
EMPLOYEES UNION CLAIMANT**

AND

ZHONGHAO OVERSEAS ENGINEERING CO LTD RESPONDENT

RULING

1. Before this court for determination is the claimant's Notice of Motion application dated February 25, 2022 through which he seeks the following orders:
 - (i) Spent.
 - (ii) That pending hearing and determination of this application *interparties*, this honourable court be pleased to issue orders directing the respondent to accept and receive check-off forms signed by its unionisable employees recruited by the claimant.
 - (iii) That pending hearing and determination of this application *interparties* this honourable court be pleased to issue orders directing the respondent to apply the Building and Construction Wages Order of 2012.
 - (iv) That pending hearing and determination of this application, the respondent be stopped from intimidating and/or harassing employees who have joined the membership of the claimant by threatening to sack the said employees.
 - (v) That pending the hearing of this application *interparties*, this honourable court be pleased to issue orders directing the respondent to forthwith commence the deduction and remittance



of Union dues of all the unionisable employees who have signed the check-off forms in favour of the claimant.

- (vi) That at the hearing of this application *interparties*, this honourable court be pleased to issue orders directing the respondent to sign a recognition agreement in recognizing the claimant.
2. The application is supported by the affidavit of Francis K Murage herein annexed and premised on the following grounds:
 - (i) That the claimant has recruited over 77 employees of the respondent out of the unionisable employees of the respondent.
 - (ii) That the said employees have signed check-off forms.
 - (iii) That the respondent has refused to pay the said employees the basic minimum wage as provided by the Building and Construction Industry Wages Order 2013 (Legal Notice no 9 of 2004)
 - (iv) That the respondent has totally refused to acknowledge or recognize the claimant despite the fact the claimant has satisfied the requirement to be recognized by the respondent by recruiting over 90% of the unionisable employees employed by the respondent.
 - (v) That the respondent by its actions has violated constitutional rights of its workers to associate as well as rights of the claimant/union to organize
 - (vi) That it will be in the interest of justice to allow this application.
 3. The respondent has never put in any response to the application and has never appeared despite being served with notices. There is an affidavit of service on record sworn by Geoffrey Mburugu M'Mukiri on March 18, 2022.
 4. The claimant's counsel submitted on July 29, 2022 in absence of the respondent.

Claimant's submissions

5. It was submitted that in the months of December 2021 and January 2020 the claimant carried out a recruitment drive and recruited over about 77 employees out of the possible 90 total unionisable workforce employed by the respondent. Upon successful completion, the claimant sought recognition by the respondent as per section 54 of the [Labour Relations Act](#).
6. The claimant states that respondent declined to sign the recognition agreement. The claimant learnt that the respondent did not pay its employees the minimum wage. The matter was referred to conciliation but it has seemingly bore no fruits.
7. It is the claimant's case that any employee has a constitutional right to belong to a trade union of his choice as per article 41 of the [Constitution](#) of Kenya and section 4(1) and (2) of the [Labour Relations Act](#). The claimant submits that the respondent has no reason whatsoever to refuse to accept the forms and to threaten the employees.
8. The respondent has no justification to refuse to deduct and remit union dues to the claimant as per section 48 of the [Labour Relations Act](#). The claimant further reiterates that it has met the threshold to be recognized by the respondent.



Determination

9. Article 41(1) of the *Constitution* of Kenya states that every person has the right to fair labour practices. Clause 2(c) of the said article provides that every worker has the right to form, join or participate in the activities of a trade union.
10. This court finds it unconstitutional that the respondent is infringing on its employees' rights to participate in the activities of a trade union as envisaged in article 41 of the *Constitution* of Kenya 2010. There is no justification for the respondent to fail to accept the check-off forms by its employees who have since been recruited by the claimant. Additionally, there seems to be no ground as to why the respondent should not sign the recognition agreement.
11. In Cause No 2145 of 2014 *Kenya Hotels & Allied Workers Union v Sentrim Kenya Limited & Another* the court held:

“This fact together with the letter dated June 30, 2015 shows that there is no valid reason why the respondent should not sign the recognition agreement with the claimant for purposes of collective bargaining. An employer is under obligation to sign a recognition agreement once a union has fulfilled the requirements of section 54 of the *Labour Relations Act*. The court therefore directs that the respondent forthwith signs the recognition agreement with the claimant for purposes of collective bargaining.”

12. The court finds that the claimant has met the threshold under section 54(1) of the *Labour Relations Act* requiring that a trade union be recognized if that trade union represents the simple majority of unionisable employees for the purposes of collective bargaining as is evidence from the check-off forms attached by the claimant. The said section states:

54(1) An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining agreement if that trade union represents a simple majority of unionisable employees

13. The respondent should henceforth start deducting and remitting union dues from its recruited employees to the claimant as per section 48 of the *Labour Relations Act*. Quoted verbatim section 48 (1) to (3) states:

48.(1) In this part, “trade union dues” means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.

(2) A trade union may, in the prescribed form, request the minister to issue an order directing an employer of more than five employees belonging to the union to-

- (a) deduct trade union dues from the wages of its members; and
- (b) pay monies so deducte-
 - (i) into a specified account of the trade union or
 - (ii) in specified proportions into specified accounts of a trade union and federation of trade unions

(3) An employer in respect of whom the minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty



days of the trade union serving a notice in form S set out in the third schedule signed by the employees in respect of whom the employer is required to make a deduction.

14. The court relies on learned judge's decision in [KUDHEIHA Workers Union v Agha Khan University Hospital](#) [2015] eKLR where it was held that:

From the above provision, it emerges that deduction and remittance of union dues is part and parcel of the obligation of the respondent following the exercise by the claimant of a right to join a union. In this case, the claimant's members chose to join the union and did sign forms authorizing the respondent to deduct union dues and remit them. The refusal by the respondent to deduct and remit these dues is an interference by the respondent of the employees' right to join and participate in the activities of a trade union. It was not the duty of the respondent to decide which employees could join a union or not so long as they are in the unionisable category and so long as they had chosen to exercise their right as provided for under article 41 of the [Constitution](#)."

15. In light of the foregoing the court makes the following orders in favour of the claimant:

- (a) The respondent is ordered to accept and receive check-off forms signed by its unionisable employees recruited by the claimant.
- (b) The respondent is ordered to apply the Building and Construction Wages Order of 2012.
- (c) The respondent is ordered to stop intimidating and/or harassing employees who have joined the membership of the claimant by threatening to sack the said employees.
- (d) The respondent is ordered to forthwith commence the deduction and remittance of Union dues of all the unionisable employees who have signed the check-off forms in favour of the claimant.
- (e) That the respondent is ordered to sign a recognition agreement in recognizing the claimant within 30 days hereof.

Costs are awarded to the claimant.

It is so ordered.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 4TH DAY OF AUGUST, 2022.

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 March 15, 2020 and subsequent directions of April 21, 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 [Civil 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

