



Kenya Engineering Workers Union v Mehta Electricals Limited (Cause 49 of 2019) [2022] KEELRC 13014 (KLR) (28 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 13014 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 49 OF 2019
J RIKA, J
OCTOBER 28, 2022**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
MEHTA ELECTRICALS LIMITED RESPONDENT**

JUDGMENT

1. The claimant filed its statement of claim on January 29, 2019, which was amended through a statement of claim dated July 3, 2020. It avers that the grievants herein were employed by the respondent on different dates.
2. The grievants were first engaged on fixed- term contracts. They subsequently continued working without written contracts, and continued to be paid salaries for over 5 years. The respondent wrote to the bank, confirming that the grievants were its permanent employees.
3. The claimant states that it recruited 150 employees of the respondent into its membership. It availed the check-off forms to the Respondent, but the respondent refused to deduct and remit trade union dues, in accordance with section 48 of the *Labour Relations Act*, 2007.
4. The claimant forwarded a draft recognition agreement to the respondent for execution. The respondent declined to execute recognition agreement, compelling the claimant to report the existence of a trade dispute to the Ministry of Labour. There was no settlement at the Ministry and the claimant filed Cause Number 1397 of 2018, before this court, seeking remedies.
5. The respondent resorted to threatening the grievants after the above claim was filed, and when the grievants' fixed- term contracts lapsed, the respondent declined renewal. They were locked out, on the basis of their association with the claimant.



6. The claimant states that the respondent's actions in declining renewal, amounts to redundancy and unfair labour practices. Out of 150 of the recruited employees, 37 were locked out while the rest had running contracts. They grievants were underpaid.
7. The claimant prays for: -
 - a. The court declares the actions of the respondent unfair, unlawful, null and void.
 - b. The grievants are allowed back on duty on permanent basis without loss of benefits and the court to declare fixed term contracts null and void.
 - c. The respondent's actions are declared to amount to redundancy, and the respondent pays the grievants severance at 15 days' salary for each complete year of service; 1 –month salary in lieu of notice; pending annual leave; and 12 months' salary in compensation for unfair termination.
 - d. The respondent to comply with section 48 of the [Labour Relations Act](#), by deducting and remitting trade union dues.
 - e. Costs and any other suitable reliefs.
8. The respondent filed its statement of response dated September 30, 2020. It denies threatening any of the claimant's members. It did not decline renewal of the grievants' contracts on account of their association with the claimant. The contracts expired, and renewal was discussed between individual employee and the employer. There was no contract which was implied to be permanent. Except for 3 employees – Peter Mania; Fredrick Mondie; and Francis Keyon- the other grievant, 21 of them, left employment on expiry of their contracts. The 3 employees are still working. Expiry of the contracts did not constitute redundancy. There was no underpayment of wages. By the time the wage order referred to by the claimant took effect, the grievants contracts had expired. The respondent denies that it breached section 48 of the [Labour Relations Act](#).
9. Parties indicated to the court on February 1, 2022, that they were engaged in out-of-court negotiations and needed more time to record settlement. There was no settlement, and on April 1, 2022, they asked the court to make a determination under rule 21 of the [F&LRC \[Procedure\] Rules](#), 2016. They confirmed filing and exchange of Submissions at the last mention on July 26, 2022.

The Court Finds: -

10. The contracts executed between the respondent and grievants, on whose behalf the claim is presented, were fixed-term contracts. They had a commencement date, and a clearly stated expiry date.
11. The grievants were issued notices upon expiry, advising that there would be no renewal.
12. There is no evidence placed before the court, establishing that the respondent was legally bound to renew these contracts; or that the respondent had improper motive in not renewing the contracts. It was not shown that non-renewal was on account of the grievants' association with the claimant. The respondent had no obligation to convert fixed-term contracts into permanent and pensionable terms.
13. The court similarly, has no obligation to impose permanent and pensionable terms on parties who had agreed on limited terms of service.
14. The contracts lapsed in accordance with the effective date of termination [EDT]. There is no reason for the claimant to advance the theory that there was a redundancy situation, and that the grievants merit redundancy dues. Their contracts ended, while their roles remained. There was no redundancy. There was expiry of fixed-term contracts.



15. There is no basis for the court to grant an order, requiring an employer to collectively offer employees contracts on permanent and pensionable terms. The court does not draw contracts for litigants and determine the terms and conditions of service. It does not renew individual contracts which have expired, or cause fresh ones to be executed.
16. On the second limb relating to deduction and remittance of trade union dues, the court is of the view that this should be pursued under Cause Number 1397 of 2018, which the claimant states, was presented after the respondent declined to sign recognition agreement, upon receiving check-off lists. The claimant should not present multiple claims before different courts, over the same grievance. The claimant states also, that it presented a trade dispute before the Ministry of Labour, over the same grievance. Was that trade dispute ever prosecuted?

It is ordered: -

- a. The claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT NAIROBI, THIS 28TH OCTOBER 2022.

James Rika

Judge

