



**Kenya Union of Commercial, Food and Allied Workers v Tatu City & another
(Cause E6452 of 2020) [2022] KEELRC 14647 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14647 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6452 OF 2020
M MBARŪ, J
OCTOBER 6, 2022**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

**TATU CITY 1ST RESPONDENT
KOFINAF COMPANY LIMITED 2ND RESPONDENT**

RULING

1. The respondents filed application dated 19th March, 2021 seeking for orders that the 1st respondent be struck out form these proceedings on the grounds that the claimant filed suit herein against Tatu City seeking reinstatement of 13 persons whose employed was allegedly terminated unfairly. Such persons were never in the employment of the 1st respondent as admitted at paragraph 4 of the Memorandum of Claim and therefore there exists no employment relationship between the claimant and the 1st respondent who should be struck out of these proceedings.
2. The application is supported by the affidavit of Preston Mendenhall the chief operating officer and who avers that the 1st respondent has never employed the claimant or its members and that it is a distinct company and separate from the 2nd respondent as admitted by the claimant. The bank statements of some grievants show that wages were paid by the 2nd respondent and in the absence of an employer/employee relationship between the claimant and the 1st respondent, the court lacks jurisdiction to hear and determine any claim against the 1st respondent and should be struck out form these proceedings.
3. The claimant opposed the application through the Replying Affidavit of Elizabeth Wanjiru the claimant’s organiser and in charge of recruitment and who avers that the unionisable employees of the 1st respondent have singed check off forms and when the claim herein was filed it was served and acknowledge by both respondents who asked for 14 days to reply.



4. Ms Wanjiru also avers that the 1st respondent has undertaken training of the claimant members as its employees. Initially the 1st respondent paid in cash but later started using 2nd respondent's account which was crafted to avoid liability. Both 1st and 2nd respondents are different entities to allow the 1st respondent to take advantage and deny innocent employees their dues and if the 1st respondent is allowed to exit these proceedings the claimant shall suffer irreparable loss and damage.

Determination

5. The claim herein dated 12th November, 2020 has listed the issue in dispute as being Redundancy of 13 employees.
6. The claim is that the claimant is a registered trade union while the 1st respondent is an urban development entity and the 2nd respondent is an umbrella of several coffee factories dealing with coffee plantations in Ruiru, Kiambu County. That the two respondents operate separately from each other with their own personnel running its affairs.
7. The claim is that from 2016 and 2019 the 1st respondent employed the grievants as security guards and provided tailor made training sessions on property management to enable them scale up their service delivery.
8. The claim is also that the 1st respondent dismissed the grievants from their employment unfairly without compensation of their terminal dues. The 1st respondent was using the 2nd respondent as the payee of the workers to avoid negotiations with the claimant.
9. On the matter before court, the claimant had registered a dispute with the Minister against the 1st respondent pursuant to Section 62 of the [Labour Relations Act, 2007](#).
10. In the Memorandum of Response filed by the respondents deny employment of the grievants and that there is no Recognition Agreement with the claimant as such Agreement exists between the 2nd respondent and Kenya Plantation and Agricultural Workers Union entered into on 1st December, 2011 and since, several collective bargaining agreements (CBAs) have been negotiated.
11. On the contested facts with regard to the employment relationship, on the one hand the claimant asserts that the 1st respondent employed security guards at its establishment but paid by the 2nd respondent. The other fact is that there exists recognition and CBA between the 2nd respondent and Kenya Plantation and Agricultural Workers Union which union represents the interests of employees therefrom.
12. On the intertwined issues based on the affidavits before court, it would not assist to resolve the issues in dispute unless the question in dispute, that of redundancy of 13 employees is heard and determined on the merits. To remove the 1st respondent from these proceedings will deny the court a necessary party to assist the court as to who employed the security guards deployed at its establishment/premises and who received training to offer service.
13. With regard to standing of the claimant to file suit herein, the non-recognition of a trade union by the employer is not a bar to representing unionised members in court proceedings pursuant to Section 54(1) of the [Labour Relations Act, 2007](#). Recognition of a trade union is meant to facilitate collective bargaining but caution
14. that before recognition the subject trade union must achieve the legal threshold of a simple majority and further that in such sector there is no other trade union which represents the workers interests



so as to avoid chaos and industrial unrest. See *Kenya Union of Commercial, Food & Allied Workers v Attorney General & another; Central Organisation of Trade Unions (Interested Party)* [2020] eKLR.

15. Instead of striking out the 1st respondent, justice would be achieved with inclusion of the recognised trade union as an interested party herein. Such shall suffice.
16. Accordingly, the court finds the 1st respondent as a necessary party to assist the court in arriving at a full determination of the issues in dispute herein. Application dated 19th march, 2021 is found without merit. The court shall hear the claim on the merits. Costs shall abide the outcome of the suit.

DELIVERED IN COURT AT NAIROBI THIS 6TH DAY OF OCTOBER, 2022.

M. MBARÚ JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

