



Kenya Engineering Workers Union v Ms Abyssinia Iron & Steel Limited (Citation Cause 13 of 2022) [2022] KEELRC 13145 (KLR) (3 November 2022) (Ruling)

Neutral citation: [2022] KEELRC 13145 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CITATION CAUSE 13 OF 2022**

AK NZEI, J

NOVEMBER 3, 2022

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

MS ABYSSINIA IRON & STEEL LIMITED RESPONDENT

RULING

1. The application before me is the Claimant's Notice of Motion dated 3rd March 2022 and was filed contemporaneously with the claim documents on 16th March 2022. The Claimant/Applicant seeks the following orders:-
 - a) an interim order against the Respondent to comply with Section 48 of the *Labour Relations Act* by way of deducting and remittance of union dues with immediate effect from the Claimant's members, mainly from Athi River and Mombasa branches.
 - b) an interim order restraining the Respondent from victimizing the Applicant's members on ground of Trade Union activities/affiliation and/or on the basis of this suit by way of termination, redundancy, dismissal and/or change of current contracts pending hearing and determination of the suit.
 - c) costs of the application be met by the Respondent.
2. The application is based on stated grounds and on the annexed supporting affidavit of Wicliffe A. Nyamwata, the Claimant/Applicant's General Secretary, whereby it is deponed, inter-alia:-
 - a) that the Claimant/Applicant recruited the Respondent's employees based at Kisumu and Athi-River branches and check-off forms were forwarded to the Respondent.



- b) that the Respondent declined to deduct and or remit union dues, forcing the Claimant/Applicant to take the matter to Kisumu Employment and Labour Relations Court whereupon the Respondent was ordered to comply.
 - c) that since the year 2014, there has been no compliance regarding Athi-River branch.
 - d) that the Claimant/Applicant also recruited Top Steel Limited employees and forwarded check-off forms, but when the matter became the subject in Mombasa ELRC Cause no. 92 of 2021, it was revealed that the Respondent herein had bought the entire business of Top Steel Limited, and that this led to withdrawal of the suit to pave way for negotiations on the issue of union dues.
 - e) that the Claimant/Applicant forwarded check-off forms to the Respondent on 20th February 2020, and subsequently wrote requesting for a meeting on non-remittance of union dues, but there has been no response.
 - f) that the parties herein have a duly signed Recognition Agreement signed on 24th June 2016, signed pursuant to Kisumu Cause No. 74 of 2013 between the parties herein.
 - g) that pursuant to the Court's decision in the said case, the Respondent effected deductions on the Claimant/Applicant's Kisumu branch members only; and refused to meet the Claimant/Applicant.
 - h) that the Claimant/Applicant invoked Section 62 of the Labour Relations Act and reported a trade dispute to the Labour Ministry upon which the appointed conciliator delved into non-issues in the dispute.
 - i) that the Respondent has refused to comply with Section 48 of the Labour Relations Act 2007, and has started threatening the Claimant/Applicant's members with termination if they do not withdraw membership.
 - j) that the Respondent's actions are in violation of Article 41 of the Constitution and the mandatory provisions of Sections 48 & 54 of the Labour Relations Act.
3. The application is opposed by the Respondent vide a Replying Affidavit sworn by one Ravi Gada, the Respondent's Financial Controller, wherein it is deponed:-
- a) that the Claimant's application is incurably defective, bad in law, misconceived and an abuse of the Court's process.
 - b) that the Respondent has been deducting and remitting dues as admitted by the Claimant/Applicant, but has been unable to effect deductions of union dues in respect of the employees listed in the check-off forms annexed to the supporting affidavit of Wicliffe Nyamwata, as such persons are not employees of the Respondent.
 - c) that out of the persons listed on the said check-off forms, only one person is an employee of the Respondent.
 - d) that the parties herein have been in constant communication, and that the Claimant/Applicant is aware of the foregoing fact.
 - e) that the Respondent has not threatened the Claimant's members, and has not violated their rights.



- f) that a similar dispute has been heard and determined by the Court at Kisumu, and the present action is res-judicata.
4. The Claimant/Applicant filed a further affidavit, sworn by Wiccliffe A. Nyamwata on 6th June 2022, and deponed, inter-alia:-
- a) that the action herein is not re-judicata as orders in Kisumu Cause No. 74 of 2013 were on signing of a Recognition Agreement, which parties herein duly complied with.
 - b) that the suit herein is on compliance with the mandatory provisions of Section 48 of the *Labour Relations Act*.
 - c) that it is the Respondent herein who sought the withdrawal of Mombasa Cause No. 92 of 2019 to enable the parties to engage at their level or to seek conciliation, but the Respondent has declined all requests.
5. Whereas the Respondent depones that only one person out of the persons listed on the check-off forms exhibited by the Claimant is the Respondent's employee, the Respondent has not told the Court whether the rest of the listed persons were employees of the Respondent at any given time, and when they ceased to be such employees.
6. The Respondent has also not pointed out the person, out of the listed individuals, who is the Respondent's employee as alleged in the Replying Affidavit of Ravi Gada.
7. The Respondent has not denied that there exists a duly executed Recognition Agreement between the parties herein, executed pursuant to the Court's decision in Kisumu Cause No. 74 of 2013.
8. Section 48 of the *Labour Relations Act* provides as follows:-
- “(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 trade union to:-
 - (a) deduct trade union dues from the wages of its members; and pay monies so deducted:-
 - (i) in specified account of the trade union; or in (ii) specified proportions into specified accounts of a trade union and a 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 deductions.
 - (4) the Minister may vary an order issued under this Section on application by the trade union.



- (5) an order issued under this Section, including an order to vary, revoke, or suspend an order, takes effect from the month following the month in which the notice is served on the employer.
 - (6) An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.
 - (7) a notice of resignation referred to in Subsection
 - (6) takes effect from the month following the month in which it is given.
 - (8) An employer shall forward a copy of any notice of resignation he receives to the union.”
9. One of the documents annexed to the Claimant/Applicant’s supporting affidavit is a report by Kisumu County Labour Officer dated 13th October 2021, wherein the said County Labour Officer found that Abyssinia Iron and Steel Limited Kisumu, which signed a Recognition Agreement with the Claimant in 2016, remits union dues; and that Abyssinia Kisumu is a separate entity from Abyssinia Athi-River and Abyssinia Mombasa; which are totally different companies.
 10. The foregoing facts, which the Claimant/Applicant refers to in the Supporting Affidavit as non-issues in the dispute, are indeed core-issues in the dispute. If, indeed, it is true that Abyssinia Iron and Steel Limited Kisumu, Abyssinia Iron and Steel Limited Athi-river and Abyssinia Iron and Steel Limited Mombasa are totally different companies and therefore different employers, then the proceedings herein ought to be specific on which of the three companies/employers the orders sought herein are to be directed and whether there is inexistence a Recognition Agreement between the Claimant/Applicant and that employer; and whether there has been an order given by the Minister under Section 48 of the *Labour Relations Act* to that employer.
 11. If the Claimant/Applicant maintains that Abyssinia Iron and Steel Limited is one entity/employer with branches in Kisumu, Athi-River and Mombasa, then that fact has not been addressed and/or demonstrated at this stage.
 12. Further, the Forms S annexed to the Claimant/Applicant’s supporting affidavit are not dated, and it is not possible to tell when they were signed by the employees named therein; and whether the named employees work in Abyssinia Iron and Steel Limited Kisumu, Athi-river or Mombasa.
 13. In view of the foregoing grey areas, I am unable to grant the orders sought in the application dated 3rd March 2022. The same is hereby dismissed with no order as to costs.
 14. Parties herein are directed to fix the main suit for hearing and determination.
 15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 3RD DAY OF NOVEMBER 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.



AGNES KITIKU NZEI

JUDGE

Appearance:

..... for Claimant/Applicant

..... for Respondent

