



**Kenya Engineering Workers' Union v Jokali Handling Services Limited
& another (Employment and Labour Relations Cause 18 of 2017)
[2022] KEELRC 13458 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13458 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 18 OF 2017
CN BAARI, J
DECEMBER 8, 2022**

BETWEEN

KENYA ENGINEERING WORKERS' UNION CLAIMANT

AND

JOKALI HANDLING SERVICES LIMITED 1ST RESPONDENT

ABYSSINA IRON & STEEL LIMITED-KISUMU 2ND RESPONDENT

JUDGMENT

1. Before court is the claimant's memorandum of claim dated January 25, 2017, and filed on January 26, 2017. The claimant seeks an order compelling the respondents to comply with the mandatory provisions of section 48 of the *Labour Relations Act*, 2007, by way of deducting and remittance of union dues.
2. The 1st respondent entered appearance on March 8, 2017, and filed the respondent's statement of response on similar date.
3. Together with the claim, the claimant filed an application under certificate of urgency, and which the court resolved and orders granted vide a ruling rendered on May 4, 2017.
4. Parties canvassed the claim by way of written submissions.
5. All parties filed submissions.

The claimant's case

6. The claimant's case is that in the month of January, 2014, the respondent's 172 employees did join the claimant union by duly signing the check off forms.



7. It is the claimant's further case that on the January 23, 2014, the claimant forwarded the original check off forms to the respondent requesting her to comply with section 48 of the *Labour Relations Act, 2007*, by way of deducting and remittance of union dues.
8. The claimant states that the respondents declined to comply with the mandatory provision of the law as required under section 48 of the *Labour Relations Act, 2007*.
9. The claimant further states that in compliance with section 54 of the *Labour Relations Act, 2007*, the claimant herein did forward the recognition agreement on the January 24, 2014, for signing but the respondent herein declined to sign. The claimant further states that 172 employees of the respondent's represent 100% of her total unionisable workforce.
10. The claimant states that refusal by the respondent to accord the claimant recognition prompted the claimant to invoke section 62 of the *Labour Relations Act, 2007*, by reporting the trade dispute to the Labour Ministry.
11. It is the claimant's case that during conciliation the 1st respondent did allege that she was not the employer, but rather, the employer was Abyssinia and Iron Steel, now joined herein as the 2nd respondent.
12. The claimant states that the conciliator invited both the 1st and 2nd respondents to the conciliation meeting but they declined to attend prompting her to issue parties with a certificate of disagreement, hence forwarding of this matter to the honourable court for determination
13. The claimant states that the respondents are in breach of article 41 of the *Constitution* on unfair labour practices for denying workers their constitutional right on freedom of association.
14. The claimant further states that the respondent is in breach of section 48 of the *Labour Relations Act, 2007*, which is a mandatory provision of the law for refusal to deduct and remit union dues.
15. The claimant finally states that she had met all the three (3) requirements for recognition being that no rival union exists at the respondents, it had recruited 100% of the unionisable employees of the respondent, and that it is the most relevant union as per her registered Constitution.

The 1st respondent's case

16. The 1st respondent's case is that she employs workers on a contractual basis, and that the contracts may be long or short term depending on the nature of work, the needs of the clients and other considerations.
17. It is the 1st respondent's case that the claimant did not bother to find out the nature of engagement between herself and her membership, leading the claimant to demand to be paid dues in respect of employees whom the 1st respondent no longer had in her service.
18. The 1st respondent further states that the contracts of service between her and the claimant's members has since expired, other employees have since been dismissed due to misconduct, while others left due to natural attrition.
19. The 1st respondent further states that some of the alleged employees on the claimant's check-off list were never employees of the respondent. It is the 1st respondent's further case that some of the names were fraudulently added twice on the check-off forms raising suspicion of mischief on the part of the claimant.



The 2nd respondent's case

20. The 2nd respondent's case is that she is a stranger to the statements that some 172 employees joined the claimant's union as the said employees were never her employees. The 2nd respondent further states that the check off forms referred to by the claimant relates to a document sent to the 1st respondent and not herself; the 2nd respondent.
21. The 2nd respondent contends that it has never received any check off forms from the claimant, and has thus never had any obligation to comply with the provisions of section 48 of the [Labour Relations Act 2007](#), in respect of the claimant, for reasons that there has never been any recognition agreement between the claimant and the 2nd respondent herein.
22. The 2nd respondent states that it has never been engaged by the claimant on the issue of a recognition agreement, and the claimant's conclusion that the 2nd respondent has refused to accord her recognition is inaccurate.
23. The 2nd respondent states that the claimant must first engage the 2nd respondent within the law on the process of recognition, so as to confirm whether the claimant has met the threshold for recognition.
24. The 2nd respondent contends that it has not breached any law and that the claimant's prayers at paragraph 4.1 of the memorandum of claim is incoherently moot.
25. The 2nd respondent states that there is no cause of action alluded to as against herself and hence the suit against the 2nd respondent is therefore frivolous and a waste of court's time.
26. The respondent states that the claimant's claim as against the 2nd defendant has abated for the reason that the summons were taken out over one year after the claim was amended to include the 2nd respondent.

The claimant's submissions

27. The claimant submits that the redundancy was un-procedural, unfair and unlawful, and that this has been dealt with by the court in the orders granted on May 4, 2017, leaving no doubt that the same was unlawful.
28. The claimant submits that the grievants/employees are entitled to payment of one-month notice, 15 days pay as severance for each completed year of service, 12 months salary for un-procedural, unfair and/or unlawful redundancy, 66 months salary from when the redundancy took place as orders have not been set aside, unpaid house allowance for 90 months and issuance of certificates of service.

The 1st respondent's submissions

29. The 1st respondent submits that she complied with section 40 of the [Employment Act 2007](#) when rendering the claimant's members redundant.
30. The 1st respondent submits that there was no registered collective bargain agreement between her and the claimant herein.
31. The 1st respondent submits the grievants ceased to be employees of the 1st respondent by April 1, 2017, as per the notice dated March 1, 2017.
32. The 1st respondent states that having failed to establish the link between the 1st respondent's conduct and the claimant's members redundancy, the claimant is not entitled to any reliefs sought. The



respondent further states that the claimant has failed to demonstrate by evidence how the 1st respondent's relate with the claimant, since there is no existing collective bargain agreement between them.

33. The 1st respondent submits the claimant is not entitled to the union dues as it was not recognized by the 1st respondent as required by law under section 54 of the *Labour Relations Act*.

Analysis and determination

34. I have carefully considered the pleadings herein, together with the parties' submissions and arrived at just one issue for determination; which is whether the respondents should remit union dues to the claimant herein.
35. The 1st respondent filed a motion to join the now 2nd respondent to this suit, which application was allowed, hence the joinder of Abyssinia Iron and Steel Limited.
36. None of the parties herein called witnesses, instead, opting to canvass the cause through written submissions on the basis that the only issue pending determination, is the one concerning remission of union dues.
37. This court (Maureen Onyango J) through orders granted on May 4, 2017, directed the 1st respondent to deduct and remit union dues from all members of the claimant in her employment. in the same orders, the court retrained the 1st respondent from declaring any workers redundant without complying with section 40 of the *Employment Act*, 2007.
38. These orders as evidenced by the court record, were not complied with, leading to the filing of contempt of court proceedings. The contempt motion was also dismissed.
39. The dismissal of the contempt motion in my view, confirms that the 1st respondent proceeded to declare redundancies. There is also no evidence that union dues were ever remitted as earlier directed by the court.
40. Section 48 of the *Labour Relations Act*, states thus in respect of union dues:

' 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 deducted—
 - (i) into a specified account of the trade union; or
 - (ii) in 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 a deduction.

- (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 trade union.

41. Considering that the 1st respondent proceeded with the redundancy, it is not clear how many members of the claimant (if any) are still in the service of either of the respondents. The law requires that a union has more than five members in the service of an employer to qualify to remit union dues.
42. The claimant did not also controvert the 2nd respondent's assertion that no check-of forms were sent to her for purpose of deduction of union dues. This alone, in my view, renders the claim immature as the claimant has jumped ship, for failure to adhere to legal procedures leading up to remission of union dues.
43. The 2nd respondent contends that she and the claimant have never commenced the process of negotiation of a recognition agreement.
44. The court was further told that the 1st respondent does not now have a contractual relationship with the 2nd respondent, and with the later denying the existence of a recognition agreement between her and the claimant, then makes the grant of the orders sought untenable.
45. In whole, I find and hold that the claim as filed does not disclose a cause of action, and is for dismissal. Consequently, the claimant's cause is hereby dismissed in its entirety.
46. I make no orders as to costs.
47. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 8TH DAY OF DECEMBER, 2022.

CHRISTINE N BAARI

JUDGE

Appearance:

Mr Makale present for the Claimant

Ms Esese present for the 1st respondent

Mr Abande present for the 2nd respondent



