



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 340 OF 2013**

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

**V**

**RELIABLE CONCRETE WORKS**

**LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Kenya Building Construction Timber & Furniture Industries Employees Union (the Union) commenced legal proceedings against Reliable Concrete Works Ltd (Respondent) on 11 October 2013 and the issue in dispute was stated as *Refusal by the company to revise Collective Bargaining Agreement which contains 31 clauses.*
2. On 1 November 2013, the Respondent sought time to file a Response and the Court directed it to file and serve the same before 14 November 2013.
3. The Response was filed on 15 November 2013.
4. Because the Cause has taken inordinately long to conclude, it is necessary, in view of the Court, to outline the chronology of events subsequent to the filing of the Cause, to understand exactly who frustrated the expeditious determination of the Cause.
5. On the 15 November 2013, the Court directed the Union to file and serve a recognition agreement and the last collective bargaining agreement it had with the Respondent before 29 November 2013.
6. When the Cause was mentioned on 2 December 2013, Respondent confirmed that the Union had served it with a copy of a collective bargaining agreement on 29 November 2013, but it needed to study the documents.
7. The Court directed the Cause to be mentioned on 28 February 2014 with a view to record a compromise if any. But on this day, none of the parties attended Court.
8. The Cause was next mentioned on 1 April 2014 when the Respondent informed the Court that it had not been served with a copy of the recognition agreement.
9. The Court directed the Union to serve the Respondent with a copy of the recognition agreement and the Respondent serve the Union with a list of all its employees before 8 May 2014.
10. The Respondent filed a list of employees on 6 May 2014, but the Union had not filed/served a copy of the recognition agreement.
11. During the appearance on 8 May 2014, the Union's counsel informed the Court it had not seen the list of employees filed by the Respondent. The Court ordered the parties to meet within 30 days and harmonise the list of employees. The Cause was fixed for mention on 12 June 2014.
12. On 12 June 2014, the parties informed the Court that they had not met. The Court gave them a further 60 days to harmonise the list of employees and negotiate with a mention fixed for 23 September 2014. The Union was ordered to pay adjournment fees. There is nothing on record to indicate the adjournment fees were paid.

13. On 23 September 2014, the Court directed the Union to file and serve a copy of the recognition agreement before 10 October 2014 when the Cause was to be mentioned for further directions.
14. On 10 October 2014, the Union had not filed or served a copy of the recognition agreement, but instead it sought a hearing date for the Cause.
15. The Court directed the Union and the Respondent to file and serve all documents they sought to rely on during the hearing within given deadlines. The Court fixed the Cause for hearing on 20 January 2015.
16. On 26 November 2014, the Union filed a Supplementary List of Documents which included a copy of the recognition agreement and copies of certificates of registration, and change of name.
17. On 20 January 2015, the Court realized that agreed issues had not been filed and it therefore directed the parties to file and serve their versions of the issues for determination for settlement on 10 February 2015.
18. The Union filed its version of issues on 30 January 2015, while the Respondent had filed its version earlier, on 21 January 2015.
19. During the appearance on 10 February 2015, the issues for determination were settled as follows

Union's list of Issues - 1, 6, 8 and 9 and

Respondent's List - issues 1, 4, 5 and 6.

20. Hearing therefore proceeded on the basis of the settled issues on 22 April 2015, 27 May 2015 and 3 November 2015.
21. In the course of the Union's case, on 22 April 2015, the Union sought to produce documents which had not been filed earlier despite the directives by the Court.
22. The Respondent objected to the production of the documents but the Court overruled the objection and reserved its considered ruling.
23. Before examining the issues as settled, and Cause on the merits, the Court will give reasons for admitting the Union's documents which had not been filed and served prior to commencement of the hearing.
24. From the background outlined above, it is apparent that both parties were to blame for the delay occasioned in having the Cause determined expeditiously. Both parties were playing hardball.
25. Industrial relations ought to be conducted in good faith in the interest of both employers on the one side and the employees on the other. The employers need the employees to get their profits and in this the sweat of labour is paramount.
26. On the other spectrum, employees need employers to enable them earn a living in dignity.
27. On a more substantive grounding, the documents admitted were a mix of official records from the office of Registrar of Trade Unions, correspondences to the both parties herein from the Court, and copies of collective bargaining agreements executed by the parties.
28. The Respondent could not be prejudiced by production of documents it had signed nor by correspondences from the Court to the parties, or official records.
29. In any case, the Respondent was given time to consult on the documents before cross examination.
30. Back to the Cause.
31. The Court has considered the pleadings, evidence and written submissions and will address the issues as settled on 10 February 2015.
32. Instead of giving a narration of each party's respective case generally, the Court will, where necessary outline the cases as regards each identified issue.

### **Whether the Union is a registered trade Union under Statute**

33. This was issue 1 in the Respondent's version.
34. Among the documents produced by the Union were certificates of registration and change of name.
35. On 27 June 1952, the Registrar of Trade Union's issued a Certificate of Registration certifying that a trade union by the name of the *Painters & Decorators Union* had changed its name to *East Africa Federation of Building and Construction Workers Union*.

36. On 29 May 1978, the Registrar of Trade Unions issued a certificate certifying that the *East Africa Federation of Building & Construction Workers Union* had changed its name to *Kenya Building, Construction, Civil Engineering & Allied Trades Workers Union*.
37. On 26 August 1993, the Registrar of Trade Unions issued a certificate to the effect that *Kenya Building, Construction, Civil Engineering & Allied Trades Workers Union* had changed its name to *Kenya Building, Construction, Timber, Furniture & Allied Industries Employees Union*.
38. On 15 August 2009, the Registrar of Trade Unions issued a certificate of registration no. 23 notifying all and sundry that *Kenya Building, Construction, Timber, Furniture & Allied Industries Employees Union* had been registered under the Labour Relations Act.
39. Now it is in the public domain that there were fundamental changes to the legal framework governing trade unions in 2007 when the Trade Unions Act, cap. 233 (repealed) was repealed and replaced by the Labour Relations Act, 2007.
40. Section 1 of the Fifth Schedule to the Labour Relations Act made it a requirement that trade unions existing prior to the commencement of the Labour Relations Act would be issued with certificates of registration in terms of the new Act.
41. On 21 December 2011, the Registrar of Trade Unions issued a Certificate of Change of Name to the effect that *Kenya Building, Construction, Timber & Furniture Industries Employees Union* had been registered under the Labour Relations Act.
42. The Respondent's grouse is that *Kenya Building, Construction, Timber, Furniture & Allied Industries Employees Union* and *Kenya Building, Construction, Timber & Furniture Industries Employees Union* are distinct unions with distinct registrations and therefore there is no legal connection between the Claimant Union and *Kenya Building, Construction, Timber, Furniture & Allied Industries Employees union*.
43. According to the Respondent's submissions, it was incumbent upon the Union to produce evidence that a notice in the proper form (section 27 of the Labour Relations Act and resolutions to change name from *Kenya Building, Construction, Timber, Furniture & Allied Industries Employees Union* to *Kenya Building, Construction, Timber & Furniture Industries Employees Union* were submitted to the Registrar of Trade Unions.
44. In my view, the position advanced by the Respondent has no substance or merit but is purely technical.
45. The form in which the certificate of change of name dated 21 December 2011 appears is a *pro forma* form with no provision to indicate the former name of the trade union changing its name.
46. This is in contrast to the certificates issued under the Trade Unions Act (repealed) as evidenced by the certificates of 26 August 1993 and 29 May 1978.
47. If the Respondent wanted to go behind the *pro forma* form to challenge the certificates, it was an obligation upon it to discharge, and not the Union.
48. It was challenging a *prima facie* official record and the evidential burden was on it.
49. In my view, the Union (*Kenya Building, Construction, Timber & Furniture Industries Employees Union*) is a duly registered trade union and is the successor of *Kenya Building, Construction, Timber, Furniture & Allied Industries Employees Union*.

**Whether parties had prior collective bargaining agreements from 1976/previous relationship/recognition agreement**

50. In view of the finding on the issue addressed herein above and the exhibits 5, 6, 7, 8 being recognition agreement and collective bargaining agreements registered under RCA 69 of 1995, RCA 202 of 1996 respectively the answer to issues 4, 5 and 6 raised by the Respondent must be yes.

**Whether dispute was reported to the Minister in terms of the Labour Relations Act**

51. The Union produced exhibit 10 being a letter dated 8 July 2008 reporting a trade dispute to the Minister for Labour & Human Resources Development.
52. A Conciliator was appointed, but the dispute remained unresolved as a result of which a certificate of unresolved dispute was issued on 22 June 2010.
53. The answer again must be in the positive.

## **Whether Respondent has in its employment members of the Union**

54. That the parties have a valid recognition agreement which has not been terminated or revoked is not in dispute.
55. However, the Respondent contended that at the material time, the Union could not demonstrate that it had any of the Respondent's employees within its membership to enable them engage in negotiations towards concluding a collective bargaining agreement.
56. The Respondent filed and served upon the Union a list of its employees on 6 May 2014.
57. The Court gave the parties time to go through the list and confirm whether the Union had any of the employees in its membership. No such meeting materialised and in any case, the Union did not report back to the Court on whether any of the employees in the Respondent's list was its member.
58. The question therefore becomes whether any employer who is technically bound to a recognition agreement ought to negotiate towards collective agreement where for practical purposes, the Union has no membership within the employer.
59. The Respondent submitted that because of the doctrine of frustration there was no legal need for it to engage with the union with a view to concluding a collective bargaining agreement.
60. I would agree with the contention by the Respondent except to add that the Respondent ought to make an appropriate application to the National Labour Board to have the recognition agreement revoked/terminated.

## **Conclusion and Orders**

61. The options therefore available to the parties are clear cut. The Respondent may move to have the recognition agreement revoked or terminated, or the Union may move to recruit new members from within the Respondent to enable it assert its constitutional right to organise.
62. The prayers sought by the Union are therefore incapable of being granted, and the Court orders that the claim herein be dismissed with no order as to costs.

**Delivered, dated and signed in Nakuru on this 8<sup>th</sup> day of March 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Ms. Chege, Legal Officer, Kenya Building, Construction, Timber & Furniture Industries Employees Union

For Respondent Mr. Githui instructed by Githui & Co. Advocates

Court Assistant Nixon