



Kenya Concrete, Structural, Ceramic Tiles, Wood Plys & Interior Design Union Workers v Kelco Aluminium Works Limited (Cause E104 of 2022) [2024] KEELRC 13510 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13510 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E104 OF 2022
L NDOLO, J
DECEMBER 19, 2024**

BETWEEN

KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOOD PLYS & INTERIOR DESIGN UNION WORKERS CLAIMANT

AND

KELCO ALUMINIUM WORKS LIMITED RESPONDENT

RULING

1. By my judgment delivered on 28th February 2024, I directed the Chief Industrial Relations Officer to designate a Labour Officer, to conduct a census at the Respondent’s premises with a view to establishing the following:
 - a. The names and designations of all unionisable employees within the Respondent’s establishment;
 - b. The names and designations of unionisable employees who are members of the Claimant Union.
2. Pursuant to these directions, A.K Nyagah, Assistant Labour Commissioner filed a report, indicating the total number of unionisable employees as 34 and the number of employees who are members of the union as 11.
3. The Assistant Labour Commissioner further reported that the minimum membership required for recognition of the Claimant Union by the Respondent was 18 and therefore concluded that the Union had not met the required threshold for a Recognition Agreement.
4. The Union objected to the results of the census by a letter addressed to the Deputy Registrar dated 24th July 2024. In its objection the Union states that:



- a. 10 employees who have been captured as non-unionised have denied voting 'No' to union membership and have sworn affidavits to that effect;
 - b. 2 employees namely; Teresiah Njoki and Martin Ndungu, listed as unionisable are in management and are therefore not qualified as unionisable employees;
 - c. 3 employees namely; Urbanus Muasya, Bernard Mwoni and Catherine Muthoni are employees of Kelco Furniture Company, an associate company of the Respondent and should not be part of the list.
5. Attached to the objection are affidavits sworn by some of the Claimant's members.
 6. On its part, the Respondent filed an affidavit sworn by Ramesh Shiyani on 5th November 2024. Shiyani, who describes himself as a Director of the Respondent Company, asserts that Urbanus Muasya, Bernard Mwoni and Catherine Muthoni are employees of the Respondent. Shiyani adds that he is not aware of the existence of any company known as Kelco Furniture Company.
 7. In responding to the averments contained in the affidavits accompanying the Claimant's objection, that some employees received incomplete questionnaires, Shiyani depones that having been present during the census exercise that took place on 30th April 2024, he can confirm that all employees were issued with similar questionnaires.
 8. The first point of objection by the Union is with regard to 10 employees listed as having voted 'No'. In this regard, the Union filed identical affidavits sworn by the said employees. Given the striking similarity of these affidavits, their authenticity is doubtful.
 9. Additionally, the assertions regarding the 2 employees said to be in management and the 3 said to be employees of an associate company, were not supported by any evidence.
 10. I need to point out that the census exercise became necessary because the parties did not adduce evidence to support their respective positions. The Assistant Labour Commissioner was sent by the Court as an impartial umpire, and any objection to his findings must be supported by credible evidence.
 11. No such evidence has been adduced before the Court and there is therefore no reason for me to disagree with the report submitted by the Assistant Labour Commissioner.
 12. The said report is therefore adopted with a final finding that the Claimant Union has failed to establish recruitment of a simple majority of the Respondent's unionisable employees to qualify for recognition under Section 54 of the *Labour Relations Act*.
 13. In the spirit of good industrial relations, I direct that each party will bear their own costs.
 14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF DECEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Angoya (Union Representative) for the Claimant

Mr. Okeche for the Respondent

