



Bakery, Confectionery, Food Manufacturing and Allied Workers Union v Dessra Ventures Limited (Cause E1064 of 2023) [2024] KEELRC 13576 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13576 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1064 OF 2023
AK NZEI, J
DECEMBER 20, 2024**

BETWEEN
**BAKERY, CONFECTIONERY, FOOD MANUFACTURING AND ALLIED
WORKERS UNION CLAIMANT**
AND
DESSRA VENTURES LIMITED RESPONDENT

RULING

1. The Claimant Union, suing on behalf of named fourteen grievants, whom it alleged were its members, instituted the suit herein against the Respondent vide a Memorandum of Claim dated 20th December, 2023 and filed in this Court on even date. The Claimant alleged unfair termination of the grievants by the Respondent/Applicant and sought compensation for unlawful termination, among other reliefs.
2. The Respondent defended the suit vide a statement of defence dated 4th March, 2024. The Respondent pleaded, inter alia, that the Claimant lacked capacity to institute the suit herein, as it had not attained a simple majority for recognition by the employer (the Respondent) under Section 54(1) of the Labour Relations Act. That the Respondent would seek to have the suit struck off for want of capacity. The Respondent further pleaded that the Claimant had not undertaken any lawful process of recruitment of its employees, and had not attained the threshold to institute the suit.
3. On 8th July, 2024, the Respondent filed a Notice of Motion dated the same date, and sought to have the entire suit herein struck off with costs on grounds:-
 - a. that the Claimant and the Grievants are strangers and lack the locus standi to institute a suit against the Respondent.
 - b. that the Claimant lacks the locus standi to sue on behalf of the Grievants under Section 54 of the Labour Relations Act.



- c. that the Grievants were not members of the Trade Union at the time of the cause of action and, therefore, the Claimant lacks the locus standi to sue on their behalf.
4. The application, expressed to be brought under Sections 48 and 54 of the *Labour Relations Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules, is based on the supporting affidavit of AMINA ABDULLAHI OSMAN, the Respondent/Applicant's director; sworn on 8th July, 2024. It is deponed in the said supporting affidavit:-
 - a. that the Claimant is not a recognized trade union by the Respondent/Applicant, having not met the statutory minimum of simple majority of the total number of employees at the Respondent company.
 - b. that the Respondent, in an attempt to attain the alleged simple majority, unduly obtained signatures of some of the Respondent's employees in order to falsely portray to this Court to have attained the critical numbers for recognition.
 - c. that the Claimant has not in any way undertaken any lawful process of recruitment of the employees, and has not attained the threshold to institute the suit herein as it lacks capacity. That the pleadings herein are defective, and the suit should be struck off.
 - d. that no deductions have been made by the Respondent as required in law.
 - e. that knowing that it lacks capacity, the Claimant has filed a multitude of suits, being ELRC Case No. E052 of 2024, ELRC Case No. 1061 of 2023, ELRC Case No. 1062 of 2023 and ELR Case No. 1064 of 2023, all emanating from the same fraudulent conduct of the Claimant prior to the filing of the suits.
 - f. that in Case No. E1061 of 2023, the Claimant is asking this Court to compel the Respondent into negotiation of a Collective Bargaining Agreement, and for the Respondent to commence monthly deductions of its employees.
 5. The Claimant opposed the Respondent's said application vide a replying affidavit of Danchael Mwangure sworn on 17th July, 2024. It is deponed at paragraph 4 of the said affidavit:-
 - "4. . . . That the Claimant Respondent does not need to have a recognition agreement with the Respondent/Applicant or does not need to be receiving union dues from the Respondent/Applicant on behalf of its members to have the locus of instituting a suit on behalf of its unionisable members."
 6. In my view, for a trade union to attain capacity to sue an employer on behalf of its members working for the employer, those members ought to have been recruited by the trade union in accordance with the provisions of the *Labour Relations Act*, and on the basis of a pre-existing legal relationship between the trade union and the employer, established within the legal framework set out in Section 54 of the said Act. Employees recruited by a trade union outside the said framework cannot have the benefit of being represented by the trade union in any legal proceedings against their employer. Such employees can only sue in their personal capacity in the event of any cause of action against their employer arising.
 7. There has to be some order in the field of labour relations, and this, in my view, is what informed the enactment of the *Labour Relations Act*.
 8. Under Section 56(1) of the *Labour Relations Act*, a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employer's premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including but not



limited to recruiting members for the trade union, and other listed activities. If access by a trade union to an employer's premises for purposes of recruiting members is to be provided for in a recognition agreement, then it follows that such recruitment is done on the basis of a pre-existing legal relationship/ understanding between the trade union and the employer.

9. It is on the basis of a recognition agreement or a collective bargaining agreement that a trade union can sue an employer on behalf of the trade union's members who are employees or former employees of the employer.
10. By dint of Section 54(6) & (7) of the *Labour Relations Act*, a trade union aggrieved by an employer's refusal to enter into a recognition agreement with it may refer the dispute for conciliation and ultimately to this Court if the dispute is not settled during conciliation. This underscores the basic importance of a recognition agreement in labour relations.
11. In their written submissions filed herein on 1st October, 2024, the Respondent/Applicant referred the Court to the Case of Kenya Union of Employees of Voluntary and Charitable Organizations (KUEVOCO) – vs – Board of Governors & Maina Wanjigi Secondary School [2015] eKLR, where the court stated as follows:-

“Without recognition of the trade union as the representative of the interests of unionisable employees, employed by the employer or by members of an employer's organization, such a trade union without Recognition cannot file a trade dispute within the meaning of the *Labour Relations Act*. The starting point would be to apply the provisions of Section 54 (3) and (6) for such a union to have the locus standi in dealing with trade disputes; Recognition agreements or any negotiations for and on behalf of members and their employers.”

12. The Respondent/Applicant also cited the case of Communication Workers' Union – vs – Safaricom Limited [2014] eKLR, where the Court held as follows:-

“The question herein with regard to locus standi is that the Claimant union has no recognition with the Respondent and when where such recognition is lacking; there is no CBA between the parties to regulate terms and conditions of work. Without recognition by an employer, a trade union, even where registered as such, becomes a bystander waiting by the roadside for instructions. Similar to a lawyer, though having a first class honours lacks a certificate to practice as an advocate of the High Court of Kenya. Such a lawyer, though well versed in law and well suited to give legal advice to various citizens, lacks capacity to stand in court as an advocate representing a client.”

13. I fully agree, and associate myself with the foregoing Judicial decisions.
14. The Claimant has not demonstrated that there existed or there exists a Recognition Agreement between itself and the Respondent/Employer; and has not even made a pleading in that regard. In the absence of a Recognition Agreement signed by the Claimant/Trade Union and the Respondent/Employer, the two parties have no legal relationship on the basis of which a suit can be founded pursuant to the provisions of the *Labour Relations Act*. The two parties are, indeed, strangers, and the suit herein was filed by the Claimant without any form of locus standi.
15. In sum, the Respondent's Notice of Motion dated 8th July, 2024 is allowed in terms that the suit herein is hereby struck off with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024

AGNES KITIKU NZEI



JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Claimant

.....Respondent

