

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

CAUSE NO. E922 OF 2021

(Before Hon. Lady Justice Maureen Onyango)

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

ELECTRO TECHNOLOGIES LTD.....RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the Labour Relations Act to represent employees in the engineering sector as more specifically set out in the membership clause of it's constitution.
2. The respondent is a limited liability company registered in Kenya with its offices at industrial area in Nairobi county.
3. It is the Claimants case that the operations of the Respondent fall within the jurisdiction of the Claimant and that there is no other union claiming to represent employees of the Respondent.

4. There is no recognition agreement between the Claimant and the Respondent. The Claimant had sought recognition by the Respondent when this dispute arose.
5. The Claimant avers that sometime in February, 2021 it recruited 30 employees of the Respondent into its membership and forwarded the check-off forms to the Respondent to commence deduction and remittance of union dues from the recruited members in accordance with section 48 of the Labour Relations Act.
6. The Claimant avers that upon receiving the check-off forms the Respondent, by letter dated 15th July, 2021 instructed the Claimant to stop recruiting its employees. That the Respondent further instructed its employees who had enrolled into the Claimant's membership to withdraw from the union membership.
7. In the memorandum of claim dated 17th September, 2021 the Claimant seeks the orders-
 1. Spent
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3. THAT the Honourable Court be pleased to issue interim orders to the Respondent to start deducting Union dues under mandatory provisions of section 48(1)(2) of Labour Relations Act 2007.
4. THAT the Honourable Court to issue interim Orders against the Respondent to immediately sign the Recognition Agreement.
5. THAT the interim orders to be issued against the Respondent not to victimize its employees for having joined the Union.
THAT the Hon Court to issue interim orders against the Respondent not to force its employees to resign from Union contrary to Article 36 of the constitution of this country on freedom of Association
8. Together with the memorandum of claim the Claimant filed a notice of motion in which it seeks the same prayers as in the Memorandum of claim.
9. The application is supported by the affidavit of Wycliffe Nyamwata, the General Secretary of the Claimant in which he reiterates the averments in the memorandum of claim.
10. Upon receipt of the claim the Respondent filed responses to the Certificate of Urgency, Notice of Motion and Memorandum of claim. The Respondent further filed a supporting affidavit. All

the documents are dated 19th May, 2022. Mr. Jacob A.N. Kaadee, the Human Resource Officer of the respondent who handled the case on behalf of the Respondent and who signed all the documents including the affidavits on behalf of the Respondent states that the employees recruited by the Claimant voluntarily withdrew from union membership. He filed copies of letters from employees withdrawing from union membership.

11. Mr. Kaadee further states that the Respondent is not an engineering company and does not deal with engineering machines. That the Respondent is an electricity installation company. He attached the certificate or registration of the Respondent.
12. Mr. Kaadee denies that the Respondent victimized employees who joined membership of the union and states that the employees resigned after realizing that they had been misled into joining the wrong union.
13. The court directed the parties to dispose of both the memorandum of claim and the application together through written submissions.

14. I have considered the pleadings and submissions filed by the parties. The issues for determination are whether the Claimant is entitled to the orders sought.

15. Section 48 of the Labour Relations Act provides for recruitment of members by trade unions and for payment of union dues 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 union to— The Labour Relations Act, 2007 44*
 - (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.*
16. The respondent does not deny that the Claimant recruited its employees. Indeed it has attached a copy of the check-off form it received from the Claimant which has a total of 30 names.
17. The resignation letters attached to the pleadings filed by the Respondent are 14 out of which 2 are for Erick Musyoka (duplicated), and another 2 letters are copies of the same letter by James Njoroge Kamau. There are also two copies of the resignation letters of Peter Makai.
18. The names of the employees who resigned are:
1. James Njoroge Kamau
 2. Benard Mbindiyo Maingi
 3. Hesbon Omwoyo
 4. Jared Omondi

5. Peter Makai
6. Peter Asamana Mwakha
7. Isaiah Ondieki
8. Patrick Mutunga Kioko
9. Evans Oireri
10. Erick Musyoka
11. Musanga

Musanga's name is not in the check-off form from the Claimant.

19. From the foregoing, out of 28 names in the check-off forms (the names of Isaiah Ondieki and James Njoroge are repeated in the check-off forms) only 10 employees resigned from membership of the union. This therefore means that the Claimant still has 18 members in the employment of the Respondent.
20. According to Section 48 of the Labour Relations Act the Respondent is under obligation to deduct and remit union dues in respect of the 18 members.
21. The Respondent raised the issue whether the Claimant was the correct union for its employees, making reference to section 54(8) of the Labour Relations Act which provides that when determining a dispute under the section the court shall take

into account the sector in which the employer operates and the model recognition agreement published by the Minister.

22. The Respondent however did not make reference to the membership clause of the Constitution of the union to confirm that its operations do not fall under the jurisdiction of the Claimant. The fact that the Respondent is an electrical contractor does not in itself disqualify its employees from membership of the Claimant. More importantly, the Respondent has not demonstrated that any other union is more relevant or has recruited its employees.
23. The Respondent did not describe or explain the nature of the work that it carries out to persuade the court that its operations do not fall within the jurisdiction of the Claimant.
24. From the evidence on record I find no basis for refusal of the Respondent to deduct and remit union dues as per the check-off forms served upon it by the Claimant.
25. The Claimant further prayed for recognition by the Respondent. The Respondent did not deny that the Claimant had recruited a simple majority of its employees.

26. I thus find that the Claimant has proved that it recruited a simple majority of the employees of the Respondent and is therefore entitled to recognition in accordance with section 54 of the Labour Relations Act.
27. Based on the foregoing I make the following orders:
- (i) The respondent be and is hereby directed to deduct and remit union dues from all its employees who signed the check-off form to the designated account of the Claimant as specified in the check-off form.
 - (ii) The Respondent be and is hereby directed to sign recognition agreement with the Claimant within 30 days.
 - (iii) Each party shall bear its costs of this suit.

DATED AND DELIVERED VIRTUALLY IN ELDORET

THIS 25TH DAY OF APRIL 2023.

MAUREEN ONYANGO

JUDGE