



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NUMBER E006 OF 2021

BETWEEN

KENYA CONCRETE, STRUCTURAL, CERAMIC TILES

WOOD PLYS AND INTERIOR DESIGN WORKERS UNION.....CLAIMANT

VERSUS

WANXIN INVESTMENTS LIMITED.....RESPONDENT

RULING

1. The Claimant Union filed an Application dated 17th December 2020 seeking orders that, the Respondent is ordered to effect deduction and remittance of trade union dues; trade union dues in arrears are paid; immediate signing of Recognition Agreement between the Parties; commencement of CBA negotiations; and costs.
2. There are other orders sought, but all seem related to payment of trade union dues.
3. The order on protection of the Claimant's members from victimization by the Respondent, on account of their association with the Respondent, was granted by consent, on 18th March 2021.
4. It was agreed outstanding prayers in the Application are canvassed by way of Witten Submissions, which the Parties confirmed to have been filed, at the last virtual session before the Court, on 16th July 2021. Ruling was reserved for 7th October 2021, but is ready earlier, and rescheduled for delivery on the date indicated below.

The Court Finds: -

5. The orders on Recognition and negotiation of CBA, are normally considered upon trial of the main Claim. They are not provisional measures, to be granted on an Application. They are final orders. Recognition paves way for negotiation of CBA. Grant of these orders signify the beginning of a long-term relationship between the Parties, where the Claimant Union becomes the sole collective bargaining agent. It must be established through a proper trial, that the Claimant has satisfied the requirements of the law, specifically Section 54 of the Labour Relations, 2007, to earn such a status. The Claimant must show that it has recruited a simple majority of Unionisable Employees of the Respondent, before the orders sought on Recognition and CBA can be considered. This is not an evidential burden to be discharged through Affidavits, unless the Parties agree that the Court proceeds under Rule 21 of its Procedural Rules.
6. The Claimant Union appears to pursue provisional measures in the main Claim, while seeking substantive and provisional prayers in the Application. It has added an unlikely prayer for economic damages in the main Claim. Others are provisional measures.
7. Deduction and remittance of trade union dues, and protection of members from harassment on account of their association with the Claimant, are main prayers in the Claim.
8. The Claim needs to be amended. The Court is of the view that it is not sustainable as it is.
9. The prayers for Recognition and execution of the CBA cannot be considered through the Application.
10. Deduction and remittance of trade union dues flows from relevant ministerial order and check-off forwarded to the Respondent by the

Claimant. 34 check-off forms have been forwarded to the Respondent, and receipt acknowledged.

11. There is no reason for the Respondent not to act on check-off forms, by deducting and remitting trade union dues, relating to undisputed members of the Claimant.

IT IS ORDERED: -

a. The prayers on Recognition and execution of CBA shall be considered upon hearing of the Claim in full.

b. The Claimant is granted 21 days to file and serve Amended Statement of Claim as suggested by the Court, barring which, the Claim as it exists, shall be struck out.

c. The Respondent in the meantime, shall deduct and remit trade union dues with respect to uncontested members of the Claimant Union.

d. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 24TH DAY OF SEPTEMBER 2021.

JAMES RIKA

JUDGE