

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. E637 OF 2021

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS.....CLAIMANT

-VS-

KINANGOP DAIRY LIMITED.....RESPONDENT

JUDGMENT

1. *'Refusal to Sign Recognition Agreement'* is the issue in dispute declared in the Claimant's Memorandum of Claim dated 4th August 2021. The Respondent's defence is contained in a Memorandum of Reply dated 17th September 2021.

2. The matter proceeded *viva voce* with each party calling one witness; Hannington Odhiambo Onyango for the Claimant and Olivia Mwachofi for the Respondent.

The Claimant's Case

3. The Claimant claims to have recruited 72 unionisable employees of the Respondent, who acknowledged union membership by signing check-off forms.

4. According to the Claimant, the Respondent's unionisable establishment stood at 120 permanent employees. The Claimant therefore states that it had achieved 60% membership, above the required simple majority for recognition, under Section 54(1) of the Labour Relations Act.

5. The Claimant states that on 14th July 2021, it sent the check off forms to the Respondent, for the purpose of deduction and remittance of union dues.
6. On 15th July 2021, the Claimant sent a draft Recognition Agreement to the Respondent and proposed a meeting on 27th July 2021. The Claimant states that there was no response from the Respondent and when the union representatives showed up at the Respondent's premises, they found the top management had deserted their offices.
7. The Claimant claims that thereafter, the Respondent summoned its permanent employees and warned them against trade union membership.
8. The Claimant accuses the Respondent of sending eight union members on forced leave, on allegations of loss of an attendance register. The Claimant terms this as an act of intimidation on account of union membership.
9. The eight union members on forced leave are said to have been directed to report to Ndunyu Njeru Police Post, ostensibly to record statements on the alleged loss of the attendance register. According to the Claimant Union, the said employees were questioned about their union membership, prompting protest by the Union.
10. The Claimant indicts the Respondent for curtailing trade union activities and now seeks the following remedies:
 - a) An order directing the Respondent to recognise the Claimant as the sole trade union to represent the interests of the Respondent's unionisable employees;

- b) An order directing the Respondent to deduct and remit union dues on account of all union members who have signed check-off forms and to pay outstanding union dues as gazetted by the Minister, together with interest at court rates, from its own funds;
- c) An order directing the Respondent to engage the Claimant in collective bargaining, within 30 days upon signing a Recognition Agreement;
- d) A declaration that the Respondent acted unlawfully, by coercing and threatening union members, out of union membership;
- e) Costs of the suit.

The Respondent's Case

11. In its Memorandum of Reply dated 17th September 2021, the Respondent states that the Claimant's claim as filed is bad in law, as it offends Section 54 of the Labour Relations Act, on conciliation prior to invoking the jurisdiction of the Court.
12. The Claimant further states that the Claimant has not met the threshold for recognition, for purposes of recognition, as required under Section 54(1) of the Labour Relations Act.
13. The Respondent avers that as per its August 2021 payroll, it had a total of 344 employees. The Respondent adds that the 72 employees said to have been recruited into union membership, cannot be said to constitute a simple majority.

14. The Respondent goes on to state that the list of 72 employees carries double entries for two employees namely; Jason Kinyanjui Chege and Richard Kiragu Mwangi. The Respondent adds that these employees had left its employment long before the filing of the claim.
15. Further, Stephen Maina is said to have opted to withdraw from the Claimant's membership, by a letter dated 17th August 2021. Another 11 employees are said to have left employment, either through termination or resignation.
16. The Respondent concludes that the foregoing left the Claimant with only 56 union members, against a workforce of 324.
17. The Respondent denies sending any of its employees on forced leave. Further, the Respondent states that two of the Claimant's members alleged to have been sent to Ndunyu Njeru Police Post on 28th July 2021 namely; Richard Kiragu and Jason Kinyanjui, had left employment long before the stated date.
18. The Respondent defends its right to report suspected criminal activities within its premises, including loss of its attendance register.
19. Regarding the meeting planned for 27th August 2021, the Respondent claims that it had no prior notice, adding that it had stopped all physical meetings at its premises, due to a surge of COVID-19 cases among its employees.

Findings and Determination

20. The Claimant's claim is based on the averment that it had recruited a simple majority of the Respondent's unionisable employees. Section 54(1) of the Labour Relations Act provides as follows:

54.(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

21. In *Kenya Chemical and Allied Workers Union v Strategic Industries Limited [2016] eKLR* this Court stated as follows:

"Recognition is a matter of verifiable numbers and in the absence of tangible evidence of recruitment of a simple majority the Court has no basis to order recognition."

22. In the subsequent decision in *Kenya Shoe and Leather Workers Union v Crown Industries Limited & another [2017] eKLR* the Court stated that:

"Attainment of a simple majority for purposes of recognition is a matter of evidence...It follows therefore that a trade union pursuing recognition must lay before the Court documentary evidence that it has recruited a simple majority of the unionisable employees in the employment of the employer from which it seeks recognition."

23. The Court of Appeal, in its decision in ***Mombasa Maize Millers Limited v Bakery, Confectionery, Food Manufacturing, and Allied Workers Union & another [2018] eKLR*** affirmed the foregoing position, stating:

“It is not enough for a trade union to say it represents the simple majority of an employer’s unionisable employees, it must lead evidence to that effect.”

24. The numbers presented by the Claimant on recruited members and obtaining unionisable establishment were highly contested, with allegations of double entries, denunciations, resignations and withdrawals.

25. These contestations could not be ignored or wished away. The Claimant ought to have adduced evidence to prove its case. Instead, the Claimant chose to make broadside accusations of coercion and intimidation of its members by the Respondent. The Court was particularly concerned that none of the alleged members was called as a witness to confirm the allegations made by the Respondent.

26. On the whole, I find and hold that the Claimant failed to prove its claim against the Respondent. The claim therefore fails and is dismissed.

27. In the interest of industrial harmony, I direct that each party will bear their own costs.

28. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025

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JUDGE

Appearance:

Mr. Muunda for the Claimant

Mr. Mudao for the Respondent

ORIGINAL