



Kenya Union of Commercial Food and Allied Workers v Amar Hardware & Electrical Limited (Cause 12 of 2021) [2023] KEELRC 362 (KLR) (3 February 2023) (Judgment)

Neutral citation: [2023] KEELRC 362 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 12 OF 2021
NJ ABUODHA, J
FEBRUARY 3, 2023**

BETWEEN
**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS CLAIMANT**
AND
AMAR HARDWARE & ELECTRICAL LIMITED RESPONDENT

JUDGMENT

1. This claim was filed by the Claimant on 28th February 2020 as against the Respondent seeking for prayers that Respondent be ordered to;
 - a. Recognize the Claimant Union as a properly constituted and representative body and the sole labour union representing labour interests of their employees.
 - b. Deduct and remit union dues from all union members who have signed the Claimant's check off sheets and pay any other outstanding union dues as gazetted by the Minister with interest at court rates.
 - c. Engage the claimant in collective bargaining within thirty (30) days upon signing the Recognition Agreement.
 - d. Meet the cost of this suit in favour of the Claimant
2. The Respondent was served with the notice of summons dated 4th March 2020 but failed to file a response to the Memorandum of claim.
3. Directions were issued on 23rd September 2020 that the case proceeds as an undefended claim after the court was satisfied that the Respondent had been served.



4. The claim was disposed of by way of written submissions as directed by the court on 21st June 2021 which submissions I have considered at length when writing this judgment.

Determination

5. From the pleadings and the submissions before court, the dispute between the parties herein is the alleged refusal by the Respondent to sign a recognition agreement and also failure to deduct and remit trade union dues.
6. According to the Claimant, it recruited the Respondent's employees into its membership between February and June 2019, forwarded a check off forms and a draft standard Recognition Agreement to the Respondent on 16th July 2019 and 11th June 2019.
7. It was the Claimant's submission that it recruited 16 unionisable employees out of a total possible 18 which translated to 89% of the total possible unionsable employees.
8. The Claimant further submitted that the Respondent even after receiving the signed check off forms and the standard Recognition agreement neglected to sign the same hence necessitating the filing of the instant claim.
9. Article 36 (1) of the *Constitution* of Kenya provides;
"Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind."
Also, Section 54(1) of the *Labour Relations Act* stipulates;
 1. "An employer, including an employee in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionizable employees."
Section 54 (2) provides;
 2. "A group of employers, or an employers' organization, including an organisation of employers in the public sector, shall recognize a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionizable employees employed by the group of employers or the employers who are members of the employer's organization within a sector.
10. In the case of *Kenya Hotels and Allied Workers Union v Attorney General & 6 others* [2015] eKLR the Court of Appeal held;
"...For the Claimant to qualify for recognition by the 2nd Respondent, it must prove that it has achieved a simple majority of either 50% of the 2nd Respondent's member organisations or of the employees of the 2nd Respondent's members. The Court cannot hand the Claimant recognition without it proving that it has achieved a simple majority as this would contravene both Article 41 of the *Constitution* and Section 54 of the Act."
11. This court while dealing with a similar issue in the case of *Kenya National Union of Nurses.v. Friends Lugulu Mission Hospital* [2021] eKLR, observed that;
"Recognition for purposes of collective bargaining is a mandatory requirement under Section 54(1) of the *Labour Relations Act*. As observed earlier in the judgement, the



only precondition is the recruitment of simple majority of unionisable employees in the organization. Once this condition is met recognition is mandatory.”

12. Taking cue from the above provisions of the law and the authority cited, it clear that recognition is mandatory where simple majority of unionisable employees has been recruited.
13. I note that the Claimant by recruiting 16 out of the total possible 18 unionisable employees of the respondent attained the required threshold of the simple majority and as such, the Respondent was obligated to recognize the Claimant for purposes of Collective Bargaining Agreement as stipulated by Section 54(2) of the *Labour Relations Act*, 2007
14. It therefore follows that this claim is merited and I hereby order that;
 - a. The Respondent to recognize the Claimant’s Union as a properly constituted and representative body and the sole labour union representing labour interests of their employees.
 - b. The Respondent to deduct and remit union dues from all union members who have signed the Claimant’s check off sheets and pay any other outstanding union dues as gazetted by the Minister.
 - c. The Respondent to engage the claimant in collective bargaining within thirty (30) days upon signing the Recognition Agreement.
 - d. Costs of this claim to be met by the Respondent
- 15 It is so ordered

DATED AND DELIVERED AT ELDORET THIS 3RD DAY OF FEBRUARY, 2023

ABUODHA NELSON JORUM

JUDGE ELRC

