Kenya Plantation & Agricultural Workers Union v Beauty Line Limited (Employment and Labour Relations Cause E007 of 2023) [2023] KEELRC 2231 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2231 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

EMPLOYMENT AND LABOUR RELATIONS CAUSE E007 OF 2023

HS WASILWA, J

SEPTEMBER 28, 2023

BETWEEN

KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT

AND

BEAUTY LINE LIMITED .... RESPONDENT

RULING

1. The claimant Union instituted this Suit against the Respondent company by a memorandum of claim dated 20th January, 2023, alleging that the Respondent has refused to sign the Recognition agreement to enable them negotiate and conclude the Collective Bargaining Agreement(CBA) for the year 2019/2020. The Claimant sought for the following Reliefs; -
    1. An order compelling the Respondents to sign the Recognition Agreement between the parties.
    2. A declaration by this Honourable Court that the action and or inaction by the Respondents to agree on the two issues, namely; technology and medical that are of benefit to its employees is unlawful and illegal.
    3. A permanent mandatory injunction restraining the Respondent from victimizing its employees on account of its non-compliance with Article 41 of the *Constitution of Kenya*.

Claimant's Case

2. The claimant states that it is a registered trade Union within the meaning of section 2 of the *Labour Relations Act*, representing employees within the Agricultural sector. While the Respondent is a limited liability company duly registered under the *Companies Act* and carries out Business of cultivating crops which are sold both locally and internationally.

3. The basis upon which this suit is filed is that the claimant has met the threshold for recognition of a union as provided for under section 54 of the *Labour Relations Act*, but the Respondent has refused to recognize it.

4. It is stated that on 21st March, 2019, the parties herein met with a view of discussing and concluding the Collective Bargaining Agreement for the benefit of the Respondent's employees and the claimant's members. In the said meeting, the parties agreed on most issues save for the issue of new technology and provision of medical benefits, necessitating several follow up meetings which the Respondent refused to attend thwarting the efforts made by the parties in concluding the 2019/2020 CBA.

5. Due to these frustrations, the claimant approached the labour office in line with section 63 of the *Employment Act*. Upon several conciliatory meeting the conciliator concluded on 11th September, 2019 that the issues between the parties could not be settled amicably necessitating the filling of this suit.

6. It is averred that unless this Court grants the Orders sought and compel the Respondent to sign the recognition Agreement, the Claimant's members stand to suffer great prejudice contrary to the provisions of the law.

Respondent's case.

7. The Respondent filed a response to claim dated 29th March, 2023 on even date and stated that the claimant union has not met the criteria for recognition as stipulated under the law as such the partied have not signed any Recognition Agreement or CBA.

8. It is stated that the Respondent has 1900 employees, out of which 196 as in the management cadre. That the Union has recruited 263 members who are not simple majority as required under the *Labour Relations Act*. However, that the Union has been deducting and remitting Union dues with respect to the employees who are members of the claimant.

9. The Respondent admit to having several meeting on the issues raised, however, that it is unable to Recognize the claimant Union because it has not meet the criteria for recognition provided for under the law. He however stated that as soon as the claimant meets the requirements under the law, the Respondent is amenable to recognizing it.

10. He however stated that regardless of the fact that the Union is yet to be recognized by the Respondent, the Respondent increased salary for all its employees regardless of whether they are members of the Union or not and the said information communicated to the claimant.

11. Parties agreed to canvass the suit by way of written submissions. The claimant filed is submission on the 17th July, 2023 and the Respondent filed on 25th July, 2023.

Claimant's Submissions.

12. The claimant submitted from the onset that it has recruited a simple majority of the Respondent's employees in accordance with section 2 and 54(1) of the *Labour Relations Act*. It argued that the only issue for determination is on the failure by the respondent to agree on two issues being; new technology and the issue of provision of medical benefits that necessitated several meetings to enable parties reach an agreement and conclude the collective bargaining agreement for 2019/2021 period. He argued that the Respondent have not elaborated in their response of 29th March, 2023 on the allegation that the claimant has not recruited a simple majority of the Respondent's employees to require recognition and subsequent CBA. In any event that the Respondent has been remitting union dues for the members, therefore that nothing is stopping it from recognizing the Union. In this they relied on the case *Kenya*

National Union of Nurses v Friends Lugulu Mission Hospital [2021] eKLR wher Justice Abuodha stated that;

> " Section 54(1) of the *Labour Relations Act* provides that an employee, including an employer in public sector shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees in the organization concerned. The respondent herein does not seem to seriously deny that the Claimant recruited some of its unionisable employees. The respondent has confirmed that it received the check-off forms from the Claimant and had in fact effected deductions with regard to those employees who confirmed they were members of the Claimant Union".

13. It was submitted that Article 41(2)(c) of the *Constitution of Kenya* gives every worker the right to form, join or Participate in the activities and programmes of a trade union while Article 41(4) & (5) provides that every trade union has a right to -

    (a) to determine its own administration, programmes and activities;

    (b) to organise; and

    (c) to form and join a federation. Article (5) states that every trade union has the right to engage in collective bargaining. Furthermore, that the *Employment Act* also recognises the right of association of employees at section 46(c) (d) (e) and (f) which provide that participation in union activities does not constitute a ground for dismissal or for imposition of a disciplinary penalty.

14. Based on the foregoing, the Applicant submitted that it has justified its suit and urged this Court to exercise its discretion and allow the claim herein because if the same is not allowed, the employees of the Respondent who are its members stand to suffer prejudice and victimization due to the non-existence of a Collective Bargaining Agreement that can protect and shield the employees' rights and freedoms at work as required under the law.

Respondent's Submissions.

15. The Respondent submitted from the onset by stating that section 2 of the of the *Labour Relations Act* define Recognition Agreement as an agreement in writing made between a trade Union and an employer, group of employers or employers organization regulating the recognition of the trade Union as the representatives of the interests of the Unionisable employees employed. It was argued that the requirements of recognition is provided for under section 54 of the *Labour Relations Act* that states that;-

> " an employer including an employer in the public sector shall recognise a trade Union for purposes of Collective Bargaining Agreement if that Union represents a simple majority of the unionisable employees."

16. To support the argument that a Union requires to first recruit a simple majority of employee before a recognition agreement is signed, the Respondent relied on the case of *Kenya Electrical traders & Allied Workers Union V Kenya Electricity Transmissions Company Ltd* [2021] eklr where the Court held that;-

> " The legal threshold for an employer to grant recognition is set out under section 54(1) of the *Labour Relations Act* as follows: "An employer, including an employer in the Public Sector

shall recognise a trade union for purposes of collective bargaining if that union represents the simple majority of unionisable employees."

The Claimant alleged that it recruited 468 out of 800 unionisable staff of the Respondent while the Claimant contends that it was served with only 13 check-off forms allegedly signed by 235 employees. The Respondent further contended that after serving an internal memo to the said 235 employees, 167 denied membership with the union and the authority to have union dues deducted from their salaries. I have carefully perused the bundle of documents filed by the Claimant on 9.8.2019 together with the Memorandum of Claim. The Claimant's letter dated 8.4.2019 forwarded to the Respondent nine (9) check-off forms duly signed... Again the Claimant forwarded four (4) check-off forms to the Respondent by the letter dated 17.4.2019...Apart from the said two letters, the Claimant did not write again to the Respondent to submit more check-off forms duly signed by any other recruited union members from the Respondent's staff. It follows that the total members recruited were the ones contained in the 13 check-off forms, 12 of which had 18 signatories while one had 19 equaling to 235 signatures. In views of the foregoing, it is clear that 235 out of 800 staff equals to 29.3565% of the Respondent's unionisable workforce. Consequently, I find and hold that even without factoring the disputed membership, the Claimant did not recruit a simple majority of Respondents unionisable staff which the legal threshold required for recognition under section 54(1) of the *Labour Relations Act*."

17. On that basis, the Respondent argued that the Union has not satisfied the requirements for recognition found in law for the reason that there has never been a Recognition Agreement or a Collective Barging Agreement. He argued that the Respondent has 1706 unionisable employees out of which the claimant has recruited 263, which figure is way below the simple majority mark as required under section 54 of the *Labour Relations Act*. That the act of informing the Claimant about salary increase was done in good faith and for the benefit of its employees. Therefore, that until the law is strictly complied with and the Claimant recruits a simple majority, the Respondent's hands are tied and cannot recognize the claimant or enter into any CBA.

18. On costs of the suit, it was submitted that since the claimant has failed to follow the law, in first recruiting a simple majority before seeking recognition, its suit is not merited and the being that costs follow event, the costs herein should be borne by the Union.

19. I have examined all the averments and submissions of the parties herein. The main complaint by the claimants herein is refusal by the respondent to sign a recognition agreement with them.

20. The respondent on their hand aver that the claimant has not fulfilled the requirements of the law that would necessitate recognition being recruitment of simple majority of unionisable workers.

21. The law on recognition emanates from the provision of Section 54 (1) of the *LRA* which states as follows;

" 54. Recognition of trade union by employer

(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".

22. Indeed the issue of allowing a simple majority before recognition is well captioned in the law.

23. The respondent have indicated that they have 1900 employees of which 196 are in the management.

24. They aver that the claimant has only managed to recruit 263 members which number falls below the simple majority.

25. The claimants have submitted that the respondents have not elaborated on their failure of not recruiting simple majority. My understanding of the burden of proving simple majority lies with the claimant.

26. When the respondent avers that this is not the position, it is the duty of the claimant to move further and requisite for documents to prove the same.

27. The claimants have not indicated that they have sought for employment records to prove their numbers.

28. The matter has been pending for reconciliation before the Labour Officer but there is also no report from that office on the number of employees employed by the respondent vis a vis the unionisable ones.

29. In view of the omission from both parties, the only solution would be to direct that the Labour Officer to write a report on the unionisable employees after doing a head count vis a vis the number of employees and present the same before this court for consideration.

30. These would be the orders of this court.

RULING DELIVERED VIRTUALLY THIS 28TH DAY OF SEPTEMBER, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE