



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT ELDORET
COURT NAME: ELDORET LAW COURT
CAUSE NUMBER: ELRC.C/38/2019
CITATION: BAKERY CONFECTIONERY FOOD MANUFACTURING
AND ALLIED WORKERS UNION[KENYA]
VS
CARSIM ENTERPRISES LTD

JUDGMENT

ON 2021-11-12 BEFORE HON. JUSTICE J. N. ABUODHA

1. The claim before me concerns alleged refusal by the respondent to sign a recognition agreement and commence the deduction of Union dues.
2. According to the Claimant, on 1st November, 2018 it recruited 78 out of 100 employees of the respondent and forwarded standard recognition agreement to the respondent and further convened a meeting for 8th November, 2018 for purposes of deliberation and signing of a recognition agreement.
3. The meeting failed to take place and subsequent meetings scheduled were unsuccessful due to lack of cooperation from the respondent. The respondent henceforth neglected and or refused to respond to any calls or correspondence to discuss recognition agreement with the Claimant. The respondent further refused and or ignored to deduct union dues in respect of employees who had acknowledged membership to the Claimant's Union.
4. According to the Claimant the dispute was referred to Ministry of Labour and one Mr. J.N. Makaa was appointed as the conciliator. The conciliation efforts however failed due to non-cooperation of the respondent who failed and or ignored to attend all meetings called by the conciliator and further failed and or ignored to file submissions. The conciliator therefore issued a certificate of unresolved dispute leading to the filing of the claim.
5. The respondent entered appearance through the firm of C.D Nyamweya & Company Advocates. However, the Court did not find on record a memorandum of response filed by the respondent.
6. The Court noted that it gave directions with regard to filing of a response to the claim on 3rd December, 2019.
7. Several times when the matter came before me, I urged the parties to amicably resolve the matter since the dispute revolved around the issue of recognition. The Court took the view that recognition was a matter of law once a Union has attained the requisite simple majority. The respondent however, did not take cue from the Court's advice. The respondent's however, alleged that it closed operations and most of the employees left for other establishments including one called Toast and Food Flavours.
8. The Claimant union contended that, Toast and Food Flavours was related to the respondent herein.
9. Recruitment of Unionsable employees and eventual signing of recognition agreement are time sensitive. That is to say a Union may recruit unionsable employees in an establishment and if recognition agreement is not signed immediately the members recruited which meet the

minimum threshold could drop.

10. The Claimant union stated that it recruited 78 out of 100 employees of the respondent in November, 2018 which is some three years ago. There are also allegations by the respondent, which have not been denied by the Claimant union, that the respondent closed down and a new outfit known as Toast and Food Flavours has taken its place. The Claimant Union has actually contended that the new Outfit is part of the respondent.

11. Whereas it could be true that Toast and Food Flavours Limited could be related, it presents itself as a corporate body distinct from the respondent. It therefore cannot be assumed that the recruitment of respondent's employees and eventual presentation of a recognition agreement for signature by the respondent, is transferrable to Toast and Food Flavours Limited.

12. Considering however that the respondent did not file any response to the claim, the Court will therefore allow the prayers sought in the memorandum of claim.

13. It is so ordered.

DATED AT ELDORET THIS 7TH DAY OF JANUARY, 2022

GIVEN under my hand and Seal of this Court on 2022-01-05 11:21:00

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)