



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**

**CAUSE NO.42 OF 2020**

**KENYA UNION OF COMMERCIAL FOODS**

**AND ALLIED WORKERS.....CLAIMANT**

**VERSUS**

**HARIKRUSHNA SUPPLIERS LIMITED.....DEFENDANT**

**J U D G E M E N T**

1. The claimant herein seeks orders of this Court directed at the respondent to recognize the claimant union with immediate effect and to deduct and remit union dues. :
2. The claimant further seeks orders that the respondent pays arrears of union dues from September, 2019 and that the parties engage in collective bargaining within 30 days upon signing of the recognition agreement.
3. The claim was supported by the affidavit of one Rogers Ombati who stated among others that:
  - a) THAT the claimant/Applicant's constitution and rules allows it to recruit 15 unionisable employees of Respondent out of a possible 18 and the said employees acknowledge their membership by signing the Claimant/Applicant's Check-off sheets as proof of their membership.
  - b) THAT vide a letter 27<sup>th</sup> August 2019 the Claimant/Applicant sent check-off forms to the Respondent for the purpose of deduction and remittance of union dues.
  - c) THAT on 19<sup>th</sup> August, 2019 the claimant/Applicant addressed the Respondent over the Trade Union membership and sent a draft copy of the model or Draft Recognition Agreement for their study and ensuing signatures but the Respondent declined to allow the meeting for the purposes of signing the Recognition Agreement.
  - d) THAT the claimant/applicant made every effort to have the issue resolved at the parties own level but respondent frustrated every effort forcing the claimant/applicant to report a trade dispute to the State Department of Labour under Section 62 of the Labour Relations Act on 24/9/2019.
  - e) THAT the trade dispute was accepted and the Ministry of Labour endeavored to effect settlement by conciliation consequently C. Chemursoi of Eldoret Labour Office was appointed to act as a conciliators.
  - f) THAT the conciliators convened several meetings in an attempt to amicably resolve the dispute but the Respondents remained adamant and refused to recognize the union and deduct union dues.
  - g) THAT the Conciliator was left with no option but to issue a certificate of unresolved dispute under section 69 of the Labour Relations Act, 2007.
4. The respondent entered appearance through the firm of Seneti & Oburu Associates however there seemed to be no memorandum of response on record filed by the said advocates.
5. Further the matter had been mentioned severally in court and on most of these occasions the respondent's counsel was absent.
6. In his submissions before the Court, Mr. Ombati for the claimant stated that the dispute was filed within the provisions of the Labour Relations Act and in line with Court Procedure Rules, 2016. Mr. Ombati further submitted that on various dates between February, 2019 and

May, 2019 the claimant recruited the respondent's employees as union members. The claimant recruited 15 out of possible 18 unionisable employees who were in the establishment by then, which accounted for about 83.3%. This according to Mr. Ombati formed more than 51% simple majority required for purposes of recognition agreement under section 54(1) of the Labour Relations Acts.

7. Mr. Ombati further submitted that after the union informed the respondent that their employees had joined the union, the respondent started intimidating and harassing employees to join an outsourcing company and withdraw their membership from the union.

8. Recognition is mandatory once a union has demonstrated that it has recruited simple a majority of the unionsable employees in an organization.

9. The recruitment subject matter of this dispute allegedly took place between February and May, 2019. This is well over two years ago. Although the respondent never filed a response, it would not be safe to assume that those allegedly recruited are still in the respondent's employment.

10. For this reason, the Court will order that the respondent allows the claimant union access to its premises during working hours and on prior arrangements with the respondent for the purposes of recruiting unionisable employees.

11. The Court further directs that upon recruitment of numbers contemplated, the parties to sign a recognition agreement immediately and the respondent shall commence deduction of union dues.

12. Either party be at liberty to apply to Court for any necessary directions

**13. It is so ordered.**

**DATED AND DELIVERED AT ELDORET THIS 25TH DAY OF FEBRUARY, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**