



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO E718 OF 2020
KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS.....CLAIMANT
VERSUS
MARUTI OFFICE SUPPLIERS LIMITED..RESPONDENT
JUDGMENT

Introduction

1. The Claimant initially filed its claim against the Respondent and an entity known as Sapphire Consultants as a co-respondent. By a notice dated 12th November 2021, the Claimant withdrew the claim as against Sapphire Consultants. The only surviving claim therefore is the one against Maruti Office Supplies Limited.
2. The issues in dispute in this claim have to do with recognition of the Claimant by the Respondent and deduction and remittance of union dues. By consent of the parties, the claim was prosecuted by way of written submissions.
3. The Claimant states its case in a Memorandum of Claim dated and filed in court on 5th November 2020. The Respondent's Response is dated 12th October 2021.

The Claimant's Case

4. The Claimant claims to have recruited 28 unionisable employees of the Respondent out of a total unionisable establishment of 35 employees.
5. The Claimant therefore contends that it has achieved 80% membership within the Respondent's establishment and thus claims recognition by the Respondent.
6. The Claimant states that on 29th September 2020, it sent check off sheets to the Respondent for purposes of deduction and remittance of union dues.
7. On 1st October 2020, the Claimant addressed the Respondent over trade union membership and thereafter sent a draft model Recognition Agreement on 7th October 2020. The Claimant states that the Respondent has since declined to allow a meeting for signing of the Recognition Agreement.
8. The Claimant further states that the Respondent failed to sign the Recognition Agreement prompting the Claimant to report a dispute to the State Department of Labour on 14th October 2020.
9. The Claimant avers that instead of signing the Recognition Agreement, the Respondent hatched a scheme to hand over all its employees to an outsourcing agent in the name of Sapphire Consultants.
10. The Claimant accuses the Respondent of violating the rights of its employees by issuing them with warning letters on flimsy grounds, terminating their employment and handing them over to the outsourcing agent.

11. According to the Claimant, it was forced by the Respondent's actions to come to court before conclusion of the conciliation process.

12. The Claimant seeks the following remedies:

- a. An order directing the Respondent to recognise the Claimant as a properly constituted and representative body and the sole trade union representing labour interests of the Respondent's employees;
- b. An order directing the Respondent to deduct and remit trade union dues from all union members who have signed check off sheets and to pay any other outstanding union dues as gazetted by the Minister, together with interest at court rates, from the Respondent's own funds;
- c. An order directing the Respondent to engage the Claimant in collective bargaining within thirty (30) days upon signing the Recognition Agreement;
- d. An order that the costs of this suit be met by the Respondent.

The Respondent's Case

13. In its Response dated 12th October 2021, the Respondent admits having received a letter from the Claimant dated 29th September 2020 together with check off forms signed by 28 of the Respondent's employees on 5th October 2020.

14. The Respondent further admits having received the Claimant's letter dated 1st October 2020 on 7th October 2020 in the morning, seeking for a meeting for introduction and signing of a Recognition Agreement at 2.30 pm on the same day.

15. The Respondent denies the Claimant's assertion that it declined to allow for a meeting on 7th October 2020 at 2.30 pm, which the Respondent states was on short notice.

16. The Respondent admits having received the Claimant's letter dated 14th October 2020 referring the dispute to the State Department of Labour.

17. The Respondent denies the Claimant's allegation that the Respondent intended to terminate the services of its employees and hand over all its unionisable employees to the outsourcing agent.

18. The Respondent refers to an intended redundancy, which it attributes to loss of business, caused by the prolonged closure of learning institutions from March 2020, coupled with decline in office stationary purchases due to many employees working remotely and little business in sectors such as hospitality.

19. The Respondent denies terminating the employment of any of its employees unlawfully and further denies issuing warning letters to its employees on flimsy grounds.

20. The Respondent concedes having carried out a human resource audit, with the assistance of Sapphire Consultants but denies that this was an assessment intended to change staff management.

21. The Respondent counters the Claimant's assertion that the Respondent seeks to transfer its employees to Sapphire Consultants.

22. The Respondent maintains that this dispute has been brought to court prematurely as the conciliation process has not been completed.

Determination

23. The Respondent states that by bringing the present action to court before conclusion of the conciliation process, the Claimant is in breach of Sections 73 and 74 of the Labour Relations Act. On its part, the Claimant concedes that it came to court before conclusion of the conciliation process but states that it was forced to do so by the Respondent's actions.

24. It would appear that the Claimant's precipitate action was motivated by a desire to pursue interlocutory relief, which was denied by **Nduma J** in a ruling delivered on 29th April 2021.

25. In the particular circumstances of this case, the most efficacious course of action is to refer the dispute back to the conciliator for conclusion of the conciliation process as provided by law.

26. I make no order for costs.

27. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF MARCH, 2022

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JUDGE

Appearance:

Mr. Nyumba for the Claimant

Mr. Isaac Owuor for the Respondent