



Banking, Insurance & Finance Union (Kenya) v Citi Bank, N. A (Cause 169 of 2017) [2022] KEELRC 1611 (KLR) (28 July 2022) (Judgment)

Neutral citation: [2022] KEELRC 1611 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 169 OF 2017**

**L NDOLO, J
JULY 28, 2022**

BETWEEN
BANKING, INSURANCE & FINANCE UNION (KENYA) CLAIMANT
AND
CITI BANK, N. A RESPONDENT

JUDGMENT

1. The claimant is registered as a trade union under the *Labour Relations Act*, with the mandate to represent interests of unionisable employees within the finance sector.
2. The respondent is a commercial bank regulated by the Central Bank of Kenya and operating within the umbrella of the Kenya Bankers Association (KBA).
3. The dispute before the court arises from an allegation by the claimant union that the respondent bank has locked out union activities within its establishment by irregular abolition of unionisable positions.
4. The claimant states its case in a memorandum of claim dated January 30, 2017 to which the respondent responded by a memorandum of reply dated April 18, 2017 and filed in court on April 27, 2017. The parties urged their respective cases by way of written submissions.

The Claimant's Case

5. The claimant states that it has a valid recognition agreement with the KBA, pursuant to which several collective bargaining agreements (CBAs) had been concluded, with the last one having been signed on September 25, 2015.
6. The claimant maintains that the respondent, being a member of the KBA, listed as No. 9 in Appendix A of the CBA, is bound by the terms and conditions as contained therein and specifically on deduction and remittance of union dues as provided under section 49 of the *Labour Relations Act* as read



with Gazette Notice No 924 of February 6, 2009 on deduction and remittance of agency fees from employees covered by the CBA and are not members of the Union.

7. The claimant accuses the respondent Bank of failing to deduct and remit union dues under the guise that its employees are not members of the claimant Union. The claimant further accuses the respondent of giving new job titles to its unionisable employees, while barring them from joining any union, in complete disregard of the right of the employees to join a union of their choice.
8. The claimant also blames the Respondent for failure to deduct and remit agency fees, noting that the CBA signed between it and the KBA remained binding by dint of section 59 of the [Labour Relations Act](#).
9. The claimant states that it reported a trade dispute on March 23, 2015, pursuant to which a conciliator was appointed. the matter having been unresolved at the conciliation stage, the claimant now seeks the following reliefs:
 - a. A declaration that the respondent's employees who carry out duties as outlined in the preamble clause of the CBA are unionisable employees who are privy to the terms and conditions of the CBA and are therefore eligible to pay union dues and/or agency fees as required by sections 48 and 49 of the [Labour Relations Act](#), 2007;
 - b. An order directing the respondents to compute and remit to the claimant agency fees at the rate of 1% of the unionisable employees' basic monthly salary;
 - c. A declaration that the said unionisable employees should henceforth start enjoying the terms and conditions of the CBA which is currently in force and the revised ones as negotiated between the claimant and the Respondent from time to time;
 - d. An order directing that all agency fees which has not been paid from June 1, 2014 to date be computed in arrears and paid to the Union from the respondent's resources;
 - e. A declaration that all the unionisable employees are free to join a trade union of their choice as required by [the Constitution](#) of Kenya, the [Labour Relations Act](#) and the ILO Conventions;
 - f. A declaration that the level of union representation begins from the position of subordinate staff to supervisor (section head) as currently captured in the preamble clause of the CBA with regard to the roles being carried out by such employees;
 - g. Costs of the suit.

The Respondent's Case

10. In its memorandum of reply dated April 18, 2017 and filed in court on April 27, 2017, the Respondent admits that the claimant Union is recognised as the negotiating body representing employees of members of the KBA, with the exception of officers as defined under clause 2 of the recognition agreement.
11. The respondent denies any wrong doing as contended by the claimant insisting that its actions have been in strict conformity to [the Constitution](#) of Kenya, 2010 as read with section 49 of the [Labour Relations Act](#) and Gazette Notice No 924 of February 6, 2009, with regard to deduction and remittance of union dues.
12. The respondent states that a dispute arose between the claimant union and the KBA on deduction of agency fees resulting in filing of Industrial Cause No. 508 of 2009. The respondent adds that the parties in that case recorded a consent on May 14, 2014 where it was agreed:



- a. That all unionisable non-members of BIFU working in the member banks of KBA who are benefiting from the CBA signed by KBA and BIFU on August 19, 2013 be deducted agency fees starting from June 1, 2014. The 1st payment of agency fees (relating to the month of June 2014) should be remitted to BIFU by July 10, 2014;
 - b. That in order to effect and verify the agreed position in (a) above, all member banks of KBA should submit to KBA a list of all unionisable employees who are not members of BIFU but who are benefiting from the CBA signed between KBA and BIFU on May 14, 2014.
13. The respondent explains its failure to remit agency fees to the claimant union on the basis that it did not have any eligible members of staff under that head. The respondent states that this was clearly communicated to the claimant vide letter dated 15th January 2015.
14. The respondent contends that the claim as filed is bad in law for the reason that:
- a. The claimant does not refer the court to any specific employees on account of whom it seeks remittance of agency fees;
 - b. The claimant seeks to have the respondent make payments directly to the Union without deduction of the same from any employees;
 - c. The claimant seeks to impose deduction of agency fees against the respondent without due regard to the employees' constitutional and statutory right and freedom of association;
 - d. Were the respondent to unilaterally and without colour of right implement collection and remittance from salaries of unknown employees referred to in paragraph (a) hereinabove without their due authorization and/or consent, or proof of their benefit from the CBA, then that would amount to an unconstitutional and unlawful action by the employer.
15. The respondent urges the court to find the claim devoid of merit and to dismiss it with costs.

The Claimant's Submissions

16. The claimant union submits that it has nineteen (19) members in the respondent Bank.
17. The claimant further submits that being a member of the KBA, the respondent is bound by the terms of the CBA signed between the claimant and the KBA.
18. The claimant also submits that the respondent has within its employment only two categories of employees being; management staff and unionisable staff and adds that it is entitled to agency fees on account of staff who benefit from the CBA but are not members of the Union. The claimant relies on article 41 of *the Constitution* of Kenya, 2010 as read with sections 2 and 59 of the *Labour Relations Act*, 2007 and sections 10 (3) (e), 14 and 26 of the *Employment Act*, 2007.
19. On the issue of agency fees, the claimant relies on the decisions in *Tailors & Textile Workers Union v New Wide Garments Kenya (EPZ) Limited* [2013] eKLR, *Amalgamated Union of Kenya Metal Workers v Total Kenya Limited* [2015] eKLR and *Union of Kenya Civil Servants v Kenya Medical Research Institute & another* [2021] eKLR.
20. The claimant urges that the respondent has a duty to ensure that all the individual employees' employment contracts conform to the CBA and adds that the roles performed by the respondent's members of staff are unionisable in nature, as provided in the preamble clause of the CBA.



The Respondent's Submissions

21. On its part, the respondent submits that none of its employees are covered by the terms and conditions of the CBA and as a result no agency fees is recoverable from any of its employees. The respondent relies on the decision in *Kenya Hotels and Allied Workers Union v Attorney General & 6 others* [2015] eKLR where it was held that agency fees is only payable where an employee who is not a member of the union benefits from a negotiated CBA.
22. The respondent further submits that there are no unionisable employees within its organisational structure. The respondent maintains that it offers better terms and conditions of service than those provided under the CBA and that no employee has suffered any detriment.
23. The respondent additionally submits that the claimant has failed to provide any evidence to support its contention that there are unionisable employees who are benefiting from the CBA in force to warrant the deduction and remittance of agency fees.

Determination

24. In order to determine the issues in controversy in this case, the court is required to establish whether there are unionisable (not necessarily unionised) employees within the respondent's establishment. On its part, the Respondent maintains that there are no unionisable employees within its ranks. The claimant on the other hand, accuses the Respondent of manipulating job titles in order to deny its employees the opportunity to unionise.
25. To my mind, whether a job is unionisable or not cannot be determined merely by the title of that job. This can only be achieved through an analysis of each job. In light of this, I have formed the opinion that in order for the court to reach a just determination of this dispute, an inspection in the nature of an onsite analysis of the jobs at the respondent Bank is necessary.
26. I therefore direct the Labour Commissioner to appoint a Labour Officer to conduct an onsite job analysis within the respondent's establishment. The Respondent is directed to facilitate the said job analysis by allowing the designated Labour Officer access to the work place and availing all employment records including but not limited to employment contracts and job descriptions.
27. The designated Labour Officer is directed to file a report on the job analysis within the next sixty (60) days from the date of this judgment.
28. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF JULY 2022

LINNET NDOLO

JUDGE

Appearance:

Mr. Odero for the Claimant

Miss Kavagi for the Respondent

