



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 66 OF 2017**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS.....CLAIMANT**

**V**

**KHETIA DRAPERS LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Kenya Union of Commercial, Food and Allied Workers (the Union) sued Khetia Drapers Ltd (the Respondent) on 23 February 2017, and it stated the Issues in Dispute as:

- i. Refusal to sign recognition agreement.
- ii. Deduction of union dues.

2. The Union also filed a Motion at the same time. The Motion was determined on 29 March 2017.

3. The Respondent appealed, and the Court of Appeal directed that the Motion be heard afresh.

4. On 16 July 2018, the Motion was marked as dispensed with.

5. The Respondent filed a Defense on 20 April 2017.

6. When the Cause came up for hearing on 26 November 2020, both the Union and the Respondent indicated that they would not call any witnesses.

7. The Court directed the parties to file and exchange submissions.

8. The Union filed its submissions on 11 December 2020, while the Respondent filed its submissions on 22 February 2021 (should have been filed on or before 30 January 2021).

9. The Court has considered the pleadings and the submissions and come to the conclusion that the Cause has no merit.

**Recognition dispute**

10. One, the Union reported a trade dispute to the Cabinet Secretary, Labour and a Conciliator was appointed.

11. In a report dated 11 November 2016, the Conciliator found that the Union had not achieved a simple majority threshold. This was after considering that the Union's own records showed a membership of 641 employees as against a unionisable membership of 1651.

12. The Conciliator also established that some of the names in the Union's lists were not in the Respondent's records.

13. Two, by failing to call witnesses or lead evidence, the Union failed to discharge the legal burden expected of it to the requisite standard.

14. Although submitting that the Respondent had 825 unionisable employees, the Union did not provide any evidence to back up the assertion.

**Union dues**

16. Three, in its submissions, the Union claimed for Kshs 17,395,200/- on account of union subscriptions not deducted/remitted.

16. In the Memorandum of Claim, the pleaded amount was Kshs 3,986,400/-.

17. The Union did not lead any evidence or call a witness to demonstrate how the *undeducted* subscriptions, which amounted to special damages, had skyrocketed.

18. It is even doubtful, as there was no evidence, on the exact number of employees (members) who had joined the Union at the time of the hearing or whether the purported membership of 906 had remained static over time.

19. In the Motion, the Union had asserted that it had recruited 650 out of 900 unionisable employees, but in the Memorandum of Claim, the number given was 906 out of 1000 employees.

20. This dispute has been pending for about 4 years, and much ground must have shifted. The Union should go back to the drawing board and commence fresh recruitment.

**Conclusion and Orders**

21. From the foregoing, the Court finds no merit in the Cause, and it is dismissed.

22. Because of the anticipated social partnership between the parties, each party to bear its own costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 10<sup>th</sup> day of March 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Union Mr Atela, National Union Official

For Respondent Kiarie & Co. Advocates

Court Assistant Chrispo Aura