



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E476 OF 2020

(Before Hon. Lady Justice Maureen Onyango)

KENYA BUILDING, CONSTRUCTION, TIMBER AND FURNITURE

INDUSTRIES UNION

CLAIMANT

VERSUS

TWYFORD CERAMICS COMPANY LIMITED

RESPONDENT

AND

ABDALLA KUSIMBA MOKAKHA AND

129 OTHERS

INTERESTED PARTIES

JUDGMENT

Introduction

1. The Claimant herein is a trade union registered under the now repealed Trade Disputes Act Cap 233 representing workers in the sectors covered under its constitution. In its Memorandum of Claim dated 1st September 2020, it avers that it has recruited over 800 of the Respondent's unionisable workers out of about 900 translating to over 90% of its workforce. It is pleaded that upon completion of the recruitment drive, the Claimant sought audience with the Respondent to resolve some grievances the recruited workers had with the Respondent vide a letter dated 19th August 2020. The Claimant also forwarded check-off forms and a copy of the draft recognition agreement whose receipt the Respondent refused to acknowledge.

2. It is the Claimant's case that subsequently, through its officials, it attempted to once again serve the aforementioned check-off forms at the Respondent's premises during a meeting that had been scheduled for 28th August 2020. The Respondent however instructed its security officers to bar the Claimant's officials from entry further even called police officers to forcefully remove the Claimant's officers from the premises. This occurrence prompted the Claimant's General Secretary to report the dispute to the Minister for a possible conciliation vide a letter dated 28th August 2020.

3. The Claimant pleads that it now seeks the urgent intervention of this Court as provided under Section 74 of the Labour Relations Act to issue orders directing the Respondent to accept check-off forms signed by its recruited members, to commence deduction of all union dues and to immediately recognize the Claimant which deems that it has met all requirements warranting recognition by the Respondent. It asserts that the Respondent's actions are in violation of the Claimant's recruited members' constitutional rights to belong to a trade union of their choice. Orders sought are specifically in the following terms:

a) An order directing the Respondent to immediately and unconditionally grant access to the Union in the manner provided under Section 56 of the Labour Relations Act

b) An order directing the Respondent to immediately commence deduction and remit union dues of all employees who have signed the check off forms

c) An order directing the Respondent to recognize the Claimant within a time frame set by this honourable Court

d) Costs of this claim

4. In response to the claim the Respondent initially filed its statement of response dated 6th October 2020 later amended on 20th October 2020. It is the Respondent's case that in late July and August 2020, it noticed some of its employees gathering outside its premises on weekends contrary to COVID -19 regulations. The Claimant's officials conducting the gatherings first misrepresented themselves as being from the Kenya Bureau of Statistics and a construction company respectively on different occasions. Later, on 7th September 2020 upon being served with the pleadings to the current case the Respondent deduced that the Claimant's officials were the parties who had been falsely identifying themselves.

5. The Respondent denied that the Claimant had recruited over 90% of its unionisable employees as claimed. It asserted that on scrutiny of the 829 names listed in the check-off forms, the Respondent discovered certain anomalies that drastically reduced the number of genuinely recruited employees to a figure way less than the requisite simple majority warranting recognition. The forms contained 525 forged signatures confirmed by a document examiner at the Directorate of Criminal Investigations; 805 as opposed to the alleged 829 names; the names of 76 employees belonging to the management cadre including the Respondent's Legal Manager; 78 repeated names; 15 former employees; 38 strangers and lastly that the forms were all allegedly signed on 28th August 2020, the same date that the Claimant alleges it approached the Respondent's officials to serve the same. As a result, the Claimant has only validly recruited 154 of the Respondent's employees translating to a measly 19.6%.

6. The Respondent admits to have received the Claimant's letter dated 19th August 2020, the draft recognition agreement and the check-off forms. It however denied that the Claimant had completed the recruitment exercise due to the aforementioned irregularities. The Respondent took action against some of the Claimant's officials on account of the forgeries which were reported at Kajiado Police Station. With regard to barring the Claimant's officials from its premises, the Respondent justified the same stating that allowing them access would have compromised the ongoing investigations into the alleged fraud and that they were acting in compliance with the Ministry of Health Guidelines on social distancing by limiting access so as not to jeopardize the employees' health. Moreover, restricting access did not hamper the Claimant's activities as they were free to carry out recruitment outside the Respondent's premises.

7. The Respondent denies painting the Claimant's officials as criminals and also denies being aware of any reference to conciliation as it was not served with the letter addressed to the Minister. It faults the Claimant for deliberately misleading this Court so as to obtain interim orders whose purpose was to buy time to correct the wrongs it made in recruitment process. That the Claimant sought to continue recruitment in a bid to meet the simple majority after the fact.

8. Pursuant to the Court's directions given on 7th October 2020 the main suit was dispensed with by way of written submissions.

Claimant's Submissions

9. The Claimant began by faulting the Respondent for filing an amended memorandum of response which was in complete variance with its initial response filed on 6th October 2020. It maintained that the amended response as well as the initial one amounted to two responses on record and prayed that the amended response be expunged from the Court record for being an abuse of Court process.

10. With regard to the main cause, it is the Claimant's case that in the months of July and August, its officials validly carried out a recruitment drive thereby recruiting 829 out of the Respondent's 900 employees as evidenced by check-off forms signed by the recruited employees. When they tried to serve the same upon the Respondent to commence deduction and remittance of union dues the Respondent refused to sign the forms as well as the draft recognition agreement. They once again sought audience with the Respondent which was denied. The Respondent intimidated them using their security apparatus and police harassment. According to the Claimant the Respondent's actions are in contravention of sections 48, 54 and 56 of the Labour Relations Act and an affront to the Claimant's role of safeguarding the welfare of its newly recruited members.

11. In response to the Respondent's assertion that the Claimant's scope of representation does not cover the sector in which the Respondent operates the Claimant submits that rule 1(c) of its constitution stipulates that membership of the union shall be open to all employees engaged in the listed activities including "*precast concrete manufacturing and casting trades, glazing, tiling, flooring and roofing*". The Respondent's business on the other hand is manufacturing ceramic tiles for sale. Its assertion that the Claimant's membership is open to construction industry workers who carry out actual installation of tiles during building is thus erroneous. The Claimant avers that the Respondent's unionisable employees are rightfully within its scope of representation as it also represents workers of Tile and Carpet Centre Ltd, a competitor of the Respondent which is engaged in the same business of tile manufacturing. The same is evidenced by a copy of a recognition agreement the Claimant has with the said company. The Claimant reiterates that there is no rival union claiming to represent the employees of the Respondent and expects automatic recognition as a result.

12. On the issue of recognition the Claimant submits that the Court should focus on the fact that at the time it sought recognition it had recruited a simple majority of the Respondent's unionisable employees. It is the Claimant's case that upon service of the check-off forms, the Respondent initiated a flurry of underhanded activities aimed at reducing numbers below the statutory simple majority in order to defeat this case and the Claimant's recruitment efforts. The Claimant avers that there is a possibility that the Respondent who is the party responsible for keeping employee records has doctored the numbers to misrepresent the number of unionisable employees. That it behoves both parties' cooperation in determining the said numbers in accordance with Section 54(1) of the Labour Relations Act. The Claimant places reliance on the Court of Appeal decision of **Civicon Limited v Amalgamated Union of Kenya Metal Workers [2016] eKLR** wherein the Court held thus:

"The determination of the question of existence of unionisable employees is therefore one of evidence. As more employees are engaged by an employer, some leave employment while others, through natural attrition cease being employees. For this reason and for purposes of recognition, the number of unionisable employees is not expected to remain constant. Because of this the process requires full cooperation, honest disclosure and utmost good faith especially on the part of the employer to state a true and accurate reflection of the details and particulars of its work force, specifying those who are unionisable and those who are not. No difficulty is posed by any change that increases the number of unionisable employees. However any changes that reduces that unit

below the simple majority will affect the recognition agreement. There are clear inherent risks where this happens. An employer can deliberately provide inaccurate data of its staff regarding their job titles, and description with the potential objective of blurring the actual staffing situation in the organization in order to bring the number of unionisable employees below the simple majority and ultimately to terminate a recognition agreement.

13. The Claimant submits further that upon service of the pleadings herein, the Respondent circulated a questionnaire titled “*Enquiry on Authority of Signature*” to be completed by the recruited employees whose names appeared on the check-off forms. They were required to individually appear at the Human Resource Manager’s offices to fill in the questionnaires and append their signatures thereon. This development is confirmed by the Respondent’s Legal Manager, Stephanie Naliaka in her statement where she states that she sought to establish the authenticity of the employees’ signatures on the check-off forms after some of them denounced the signatures as forgeries. It is the Claimant’s position that the aforesaid activities are in contravention of the employees’ constitutionally guaranteed right to join and belong to a trade union under Article 41 (1)(c) of the Constitution, Section 4 of the Labour Relations Act and the provisions of the International Labour Organization’s Convention No. 87 and 98. The same were underscored by the Court of Appeal in **Civicon Limited v Amalgamated Union of Kenya Metal Workers [supra]**. The Claimant raised these concerns with the Respondent in its letter of 10th September 2020 which letter was ignored.

14. The Claimant continues that the Respondent’s role stipulated in section 48(3) of the Labour Relations Act is limited to deducting the employees’ trade union dues once the Minister for Labour has issued an order to that effect. Commencement of the deduction of the union dues must be done within 30 days of receiving the check-off forms, Form S. It is submitted that the Respondent’s in-depth scrutiny and enquiry leading to the conclusion that 525 signatures were forgeries was an unconscionable overstep on its part. Coercion of employees to leave its membership was also an underhanded tactic at variance with the provisions of section 48(6) of the Labour Relations Act. The Claimant faulted the Respondent for the withdrawal of over 40 employees from its membership as a consequence of its anti-union activities.

15. Despite these developments the Claimant vehemently defends its perceived entitlement to receive union dues based on the simple majority attained as per the check-off forms pursuant to Section 48. It concludes by praying to the Court that in addition to granting the prayers enumerated in its claim, to issue orders compelling the Respondent to commence deduction of union dues from the wages of 154 of its perceived members as admitted by the Respondent which action is not dependent on recognition.

Respondent’s Submissions

16. The Respondent condensed its submissions into four salient issues namely:

i. Whether the Respondent is covered under the Claimant’s constitution

ii. Whether the Claimant is entitled to be granted access under section 56 of the labour relations act

iii. Whether the Respondent should commence deduction and remittance of union dues of the employees who have signed the check-off forms

iv. Whether the Claimant is entitled to recognition

17. In respect of the first issue the Respondent submits that it is engaged in the manufacturing, importation, sale and distribution of ceramic tiles, not the building and construction sector covered by the Claimant. Counsel cited section 14(1)(e) of the Labour Relations Act to the effect that only workers specified in a trade union’s constitution qualify for its membership. The Claimant’s constitution at Rule (c)(i) specifically mentions activities and trades in the building, construction, timber and furniture sectors; not manufacturing. With regard to the recognition agreement between Tile and Carpet Centre Limited and the Claimant, the Respondent faults the Claimant for annexing evidence to submissions and states that Tile and Carpet Centre is not involved in manufacturing. The Respondent further distinguishes “manufacture” from the definition of “*building and construction*” as set out in the **Regulation of Wages (Building & Construction Industry Wages Council Establishment) Order** as well as the **Labour Institutions (Building & Construction Industry) Wages Order (2012)**. It commits that that the two speak of construction, structural alteration, maintenance and repair of buildings and other structures.

18. On the issue of access the Respondent submits that being the wrong union to approach its workers and in the absence of a recognition agreement, the Respondent does not bear any obligation to allow the Claimant’s official’s access to the Respondent’s premises. This is in accordance with section 56 of the Labour Relations Act as well as the findings of the Court in **Bakery, Confectionary, Food, Manufacturing and Allied Workers Union (Kenya) v Proctor & Allan (EA) Limited (2015) eKLR**; **Kenya Private Universities Workers Union v United States International University (2017) eKLR** and **Kenya Universities Staff Union v Masinde Muliro University of Science and Technology (2019) eKLR**.

19. The Respondent’s submissions on recognition as per section 54 of the Labour Relations Act were largely informed by the anomalies it listed with regard to the alleged fraud and irregularities perpetuated by the Claimant’s officials. It reiterated that the Claimant had not attained the requisite simple majority warranting recognition. Moreover, the Respondent asserted that its amended response was properly on record having been amended within 14 days of the close of pleadings. Hence the Court’s leave was not required. Either way, the Claimant had a corresponding right to amend its pleadings which avenue it chose not to exploit.

20. The Interested party did not file submissions on the claim.

Analysis and Determination

21. From a consideration of the parties’ pleadings, submissions, the Court record and the applicable law, the issues arising for determination are as follows:

i. Whether the Claimant's constitution covers the Respondent's employees in respect of the industry in which it is engaged

ii. Whether the Claimant has recruited the statutory simple majority of the Respondent's employees and satisfied the condition in (i) above warranting recognition

iii. Whether the Respondent should commence deduction of union dues

iv. Whether the Claimant is entitled to recognition by the Respondent.

22. Regarding the first issue, Section 14(1)(e) of the Labour Relations Act provides that only members in a sector specified in a trade union's constitution qualify for membership of the trade union. The constitution of the Claimant provides for membership at Rule No. 1(c)(i) to the effect that membership of the Union shall be to all employees engaged in the following activities and trades: –

“Building Construction and Civil Engineering Industry, all activities covering and including structural engineering, maintenance, alteration or repair of any building, structural repair demolition or alteration, demolition of any building or airfield, preparation for and laying foundation of any intended building, all consulting engineering activities, all architectural or design activities all surveying activities, electrical contracting and installation, quarrying, drilling and site investigation work, plumbing works and installation, painting and decorating activities, road making and maintenance, pre-cast concrete manufacturing and casting trades, glazing, tiling, flooring and roofing, metal works, the construction of any railway line or siding, irrigation works, repairs, demolition, or Construction of any dock, harbour wharf, quay, pier, airfield, inland navigation works, road tunnel, bridge and viaduct, water works, lattice work structure designed solely for the support of electrical line”.

[Emphasis added]

23. Further, Rule 3(1) of the constitution of the union further provides that:-

Rule No. 3

(i) MEMBERSHIP FEES ETC

The union shall be open to all employees in the Republic of Kenya employed in the activities and trades in Rule No. 1(c).”

[Emphasis added]

24. It is clear from the membership clause that the Claimant represents employees in both activities and trades in the building, construction and furniture manufacturing sectors. In particular, it represents employees who work in undertakings, engaged in activities covering and including glazing and tiling sectors.

25. Trade is defined in **Blacks Law Dictionary Tenth Edition** as:

“A business or industry occupation; a craft or profession.”

26. As the Respondent has pleaded and submitted, it is engaged in the manufacture of tiles which are exclusively used in the building and construction sector. The Respondent has not pleaded that there is any other union which is more specific to the sector it operates in that has claimed the right to represented unionisable employees other than the Claimant.

27. From the foregoing, I find that the Claimant is the appropriate union to represent employees of the Respondent.

Whether the Claimant has recruited a simple majority of the Respondent's employees

28. The Claimant submitted that it recruited 800 out of 900 unionisable employees of the Respondent which translates to a 90% majority. It annexed the check off forms (Form S) to its list of documents.

29. The Respondent on the other hand contends that the numbers alleged to have been recruited by the Claimant are not correct as it has 860 employee on its payroll of whom 784 are unionisable. The said paragraph reads

“11. The Respondent has 860 employees on its payroll and not 900 as alleged. Of these the total unionsable employees are 784”

30. The Respondent further contends that of these, 805 were recruited by the Claimant and not 829 as alleged by the Claimant. That of the numbers recruited by the Claimant, 78 names are repeated so that the correct number recruited is 727.

31. Further that of the 727 employees recruited by the Claimant, 38 are not employees of the Respondent and are in fact total strangers to the Respondent. That a further 15 names are of individuals who left employment as far back as November 2019 and could not have signed check off forms in July and August 2020.

32. That a further 40 employees withdrew from the membership of the Claimant.

33. That the check off forms also have 42 names of individuals who are independent contractors who work and are paid on the completion of their tasks. It is further the Respondent's contention that 76 non-unionisable employees were also in the check off forms.

34. It is further the Respondent's averment that 525 signatures are forgeries as confirmed by the employees and a report from the Directorate of Criminal Investigations, a copy of which was filed by the Respondent at pages 2 to 269 and 272 to 280 of its further list and bundle of documents.

35. That the only genuine members recruited by the Claimant is thus 154 which represents 19.6% of the Respondent's workers.

36. The numbers quoted by the Respondent do not add up. If the Claimant recruited 805 employees as acknowledged by the Respondent out of which 78 names were repeated, so that the correct number recruited was 727 and from this number one deducts the 15 who left employment, 42 alleged to be independent contractors and 76 non-unionisable employees, this would leave the Claimant with 594 members.

37. The Respondent has not stated if the 525 whose signatures are alleged to have been forged include or do not include the 15 who left employment the 42 independent contractors and the 76 non-unionisable employees it further does not state if the 42 who resigned are part of the forged signatures.

38. Be that as it may, there is no determination by a competent authority of the forgery of signatures. Secondly, it is obvious from the record filed in Court that it is the Respondent through Legal Manager who filed the complaints on forgery of signatures. There is no evidence that any employee filed a complaint over the same. This is confirmed by the witness statement of Stephanie Naliaka, the Respondent's Legal Manager dated 16th October 2020 wherein she states at paragraph 6 as follows –

“6. Once I received the Claimant's documents, I sought to establish whether the allegations raised were true. Upon enquiry, I learnt that some of the employees did not sign the checkoff forms and the signatures appended on the forms were not theirs. I therefore suspected that the Claimant or its agents had engaged in forgery and I had this reported at the Kajado Police under OB No. 36/8/9/2020 where the statements of the concerned employees were taken. My statement was also taken.”

39. With reference to the enquiry on Authenticity of Signature Forms issued by the Respondent to its employees, copies of which are exhibited at pages 2 to 269 of the Respondent's further list and bundle of documents dated 20th October 2020, the Courts have held severally that this constitutes intimidation. It is not for the employer to ask employees to individually confirm union membership. What the employer should do is to implement and then let employees who did not sign raise complaints. An employee who is aware that his/her employer is hostile to a union will never admit to the employer that they signed check off forms for fear that this may lead to their dismissal.

40. The duty of an employer upon whom a check off form has been served is to confirm only that the Union has an order from the Minister issued under Section 48(2) of the Labour Relations Act. Once this is confirmed, Section 48(3), requires the employer to commence deductions of union dues. Section 48(3) provides for this in mandatory terms as follows –

(3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.

41. From the foregoing, it is clear that all the signatures alleged to have been forged are, until employees object to deduction of union dues of their own free initiative (and not upon being required to do so by the employer), valid for purposes of assessing whether or not the Claimant has achieved a simple majority.

42. With reference to employees who are alleged to have resigned, it is clear that the resignations, if genuine, for the Claimant has pleaded and submitted that the resignations were coerced by the Respondent through harassment and intimidation) they would still not count, because they were in the membership of the Claimant at the time the Claimant sought recognition on 28th August 2020. As was observed by the Court of Appeal in **Civicon Limited v Amalgamated Union of Kenya Metal Workers** (supra), the membership of a Union is not a constant but keep changing as some employees join and others cease being employees. The number of union members for purposes of recognition is therefore always reckoned at the time when the Union seeks recognition. Again as was observed in the **Civicon case**, honest disclosure and utmost good faith on the part of the employer is critical.

43. From the foregoing, it is my finding that as at the date when the Claimant sought recognition on 28th August 2020, it had in its membership a total of 727 which is acknowledged by the Respondent. Of these, the Court agrees with the Respondent that the non-unionisable employees; the 78 repeated names; the 15 names of employees who had left employment in 2019; and those who are on independent contracts (42) can be removed. This would leave the Union with a membership of 592 which represents more than a simple majority of 784 unionisable employees at 75.5%.

44. I thus find that as at the time when the Claimant sought recognition from the Respondent on 28th August 2020, it had achieved a simple majority and was thus entitled to recognition by the Respondent under Section 54 of the Labour Relations Act.

45. There are certain salient but peripheral issues which this judgment would however be incomplete if I did not address. They are the following:-

(i) KEDA (KENYA) CERAMICS LIMITED

46. The documents produced by the Respondent refer to a company called KEDA (KENYA) CERAMICS COMPANY. It is not clear

whether this company is the same as the Respondent herein. The Respondent has not either in the pleadings or in submissions, shed light on who this company is and how it is related to the Respondent.

(ii) The Amended Statement of Response

47. The Respondent filed a statement of response dated 6th October 2020. Thereafter it filed a document titled “*Amended Statement of Response*”.

48. An amendment by law and practice requires that a party strikes out of the portions of pleadings that it wishes to remove from the pleadings and by underlining of the portion of pleadings that have been freshly introduced into the pleadings. Order 8 of the Civil Procedure Rules provides at Rule 7 for the mode of amendment as follows: -

(2) All amendments shall be shown by striking out in red ink all deleted words, but in such a manner as to leave them legible, and by underlining in red ink all added words.

(3) Colours other than red shall be used for further amendments to the same document.

49. In the “*Amended Statement of Response*” filed by the Respondent, there is no striking out of any of the pleadings in the original statement of response. What has been filed are totally new pleadings with the exception of the descriptive paragraphs 1 and 2 of the original response. In effect therefore, all the pleadings in the original Statement of Response are still valid as they were not struck out. The Amended Statement of Response is therefore in actual fact, a

Supplementary Statement of Response.

50. To this extent, I agree with the Claimant’s submissions that there are glaring inconsistencies in the Statement of Response and the “*Amended*” Statement of Response that are irreconcilable.

51. The Court is thus inclined to agree with the Claimant that –

“... the Respondent was being mischievous in withholding the original memorandum of response it filed in court on the 6th October. A cursory appraisal of the allegedly amended memorandum of response reveals that the same is in fact not an amendment but complete departure from the original response carefully crafted to defeat the cause of justice herein. For example, paragraph 9 of the memorandum of response filed on the 6th October 2020 indicates that the Claimant had only recruited 467 unionisable employees while paragraph 21 of the allegedly amended response places the Claimants membership at 152.

In paragraph 9 of the memorandum of response filed on the 6th October 2020 the Respondent admits that it received the claimant's letters dated 19th August 2020 together with the draft Recognition but in paragraph 23 of the allegedly amended memorandum of response, the Respondent denies having received the said letter of 19th August 2020.

Your ladyship, these two responses by the Respondent are responses to the same memorandum of Claim by the Claimant.

The Claimant avers that the Respondents real intentions with its clandestine and contradicting pleadings will be revealed later in the submissions.”

(iii) Kajiado CMCR E003 of 2020

52. The criminal proceedings in **Kajiado CMCR E003 of 2020** relate to the documents that have been produced in this case. The charge sheet reads –

“CHARGE MAKING A FALSE DOCUMENT CONTRARY TO SECTION 347(a) & (b) OF THE PENAL CODE

PARTICULARS OF OFFENCE (See second Schedule of CPC)

FRANCIS K. MURAGE: *On the diverse dates between August 2020 and September 2020 within Kajiado Central Sub County Kajiado County made false document and signed the same document purporting it to have been signed by more than 500 (five hundred) employees of KEDA Ceramics joining the Kenya Building, Construction, Timber and Furniture Industries Employees Union.*

COUNT II

INTENT TO DEFRAUD CONTRARY TO SECTION 148 OF THE PENAL CODE

FRANCIS K. MURAGE: *On the diverse dates between August 2020 and September 2020 within Kajiado Central Sub County Kajiado County presented a false document to KEDA Ceramics with intent to deduct salaries of employees purported to have been recruited into the Kenya Building, Construction, Timber and Furniture Industries Employees Union so as to get monetary gain from*

the said document.

COUNT III

PERJURY CONTRARY TO SECTION 108(1)(a) OF THE PENAL CODE.

PARTICULARS

FRANCIS K. MURAGE: *On 1st day of September 2020 at Nairobi in a judicial proceedings between KEDA Ceramics and the Kenya Building, Construction, Timber and Furniture Industries Employees Union on Dispute No. 476 of 2020 in the Employment and Labour Relations Court before Lady Justice Maureen Anyango knowingly gave false testimony in form of a sworn affidavit administered by Mbiyu Kamau Commissioner for Oaths touching on matter which was material to any petition then pending in that hearing.*”

[Emphasis added]

53. It is not difficult to contemplate why the Respondent used the documents filed in this suit to instigate criminal charges against the Claimant’s Secretary General in the said criminal suit. This Court has powers to deal with false documents filed before it.

54. In any event, a Secretary General does not recruit employees and cannot be charged with forging signatures on check off forms. In the pleadings filed in Court, the Respondent stated that they were aware of the Claimant’s officials who were recruiting employees while disguising themselves. This was definitely not Francis Murage.

55. Further, as I have already pointed out, the employees whose signatures are alleged to have been forged are not complainants in the criminal suit. It is the Respondent who initiated the criminal proceedings.

56. Further the complainant in the suit is KEDA Ceramics and not TWYFORD CERAMICS COMPANY LIMITED, the Respondent herein. The documents alleged to have been forged are in respect of this suit which relates to TWYFORD CERAMICS. The evidence intended to be used in the criminal case is therefore obviously at variance with the documents allegedly forged.

57. In any event the matter is before this Court which has jurisdiction to deal with the issue. The criminal court in Kajiado has no jurisdiction to deal with a matter pending before this Court.

Conclusion

58. From the totality of the evidence, pleadings and legal arguments adduced by the parties, I find that the Claimant has proved its case on a balance of probabilities and make the following orders: -

(a) An order be and is hereby issued directing the Respondent to immediately and unconditionally grant access to the Union in the manner provided under Section 56 of the Labour Relations Act.

(b) An order be and is hereby issued directing the Respondent to immediately commence deduction and remit union dues of all employees who have signed the check off forms.

(c) An order be and is hereby issued directing the Respondent to recognize the Claimant forthwith.

(d) An order be and is hereby issued directing that the proceedings in Kajiado CMCR Case No. E003 of 2020 against FRANCIS K. MURAGE be and are hereby terminated.

(e) The Respondent shall pay the Claimant’s costs of this suit.

59. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 8TH DAY OF OCTOBER 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**,

which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE