



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO E271 OF 2021

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VS

ESQUIRE WHOLESALERS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. On 1st April 2021, the Claimant Union filed a Memorandum of Claim together with a Chamber Summons dated 30th March 2021, seeking an order for deduction of union dues under Section 48 of the Labour Relations Act as well as recognition, for the purpose of collective bargaining, under Section 48 of the Act.
2. The Union accuses the Respondent of failure to deduct union dues from its employees.
3. The Claimant's prayers are as follows:
 - a) An order directing the Respondent to deduct union dues;
 - b) An order restraining the Respondent from victimising the Claimant's members on account of having joined the Union.
4. The Respondent filed a Reply on 30th April 2021 to which the Claimant responded on 16th June 2021. In its Reply, the Respondent states that the employees who the Claimant claims to have recruited as its members, had written letters indicating that they did not wish to have their salaries deducted on account of union dues.
5. The Respondent further states that it is not an engineering company and does not deal with engineering machines. The Respondent adds that it is engaged in wholesale and distribution business. The Respondent therefore maintains that the Claimant Union does not represent interests within its sector.
6. The matter was canvassed by way of written submissions.
7. There are two related issues for determination in this dispute; deduction of union dues and recognition for the purpose of collective bargaining.
8. Section 48 of the Labour Relations Act defines trade union dues as:

“a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.”
9. By definition, trade union dues are premised on membership to a particular trade union. It follows therefore that a trade union claiming union dues from an employer must demonstrate evidence of membership of the employees on account of whom union dues are claimed.
10. In this case, the Claimant did not exhibit any such evidence and the claim for union dues is therefore without basis and is disallowed.
11. Regarding the issue of recognition, I will say this; under Section 54 of the Labour Relations Act, a trade union seeking recognition by an employer must show that it has recruited into its membership a simple majority of unionisable employees within the establishment. Again, the Claimant did not avail any evidence to show that it had indeed recruited a simple majority of the Respondent's employees as its members.

12. The Claimant's claim that its members were being victimised on account of their union membership was also unsupported.

13. On the whole, the Claimant did not adduce any evidence to support its claim. The result is that the claim as contained in the Memorandum of Claim and Chamber Summons dated 30th March 2021 fails and is dismissed.

14. Each party will bear their own costs.

15. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OCTOBER 2021

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JUDGE

Appearance:

Mr. Araka (Union Representative) for the Claimant

Mr. Kaadee (HRM) for the Respondent