



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 48 OF 2019

BETWEEN

BAKERY, CONFECTIONERY,

FOOD MANUFACTURING & ALLIED WORKERS UNION.....CLAIMANT

VERSUS

GRAIN INDUSTRIES LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Daniel Amalemba Advocate, for the Claimant

Balala & Abed Advocates, for the Respondent

RULING

1. Through its Notice of Motion, filed on 9th August 2019, the Claimant seeks 2 provisional measures- injunction restraining the Respondent from victimizing Claimant's Members on account of their association with the Claimant; and the Respondent be ordered to deduct from the Members' salaries, and remit to the Claimant, trade union dues.

2. The Application is supported by the Affidavit of Danchael Mwangure, General Secretary of the Claimant, sworn on 7th August 2019.

3. In the main Claim, the Claimant seeks *inter alia*, an order of recognition.

4. The Respondent opposes the Application, through a Replying Affidavit sworn by Bakari Bweta, Human Resources Manager, on 19th September 2019. He denies that any Member of the Claimant has been victimized by the Respondent, on account of their association with the Claimant. The Respondent has in place Recognition Agreement, concluded with the Kenya Union of Commercial, Food and Allied Workers [KUCFAW]. It has negotiated and concluded CBA with KUCFAW. The dispute was referred to the Ministry of Labour and taken through conciliation. It was found by the Conciliator that the Respondent has a Recognition Agreement with KUCFAW, and cannot be compelled to enter into other obligations with the Claimant. The Respondent urges the Court to find there is no *prima facie* case, to warrant grant of provisional measures sought.

5. KUCFAW was joined to the proceedings with the consent of all the Parties, on 24th October 2019.

6. The Application was heard on 5th December 2019. Parties repeated the contents of their Pleadings and Affidavits in their address to Court. KUCFAW associated itself fully with the position of the Respondent.

The Court Finds:-

7. The Respondent is currently in a valid Recognition Agreement with the Interested Party, KUCFAW.

8. Whereas the Claimant is not prevented from recruiting Unionisable Employees from the Respondent, and indicates to have indeed recruited a number of Employees, it has not undone the existing Recognition Agreement between the Respondent and the Interested Party.
9. The Respondent is deducting and remitting trade union dues, under the existing Recognition Agreement. Section 48 of the Labour Relations Act 2007, does not envisage deduction and remittance of trade union dues, to multiple Trade Unions.
10. There is a mechanism for Employees/Members of a Trade Union, to pay union dues directly to their Union, under Section 52 of the Labour Relations Act. Claimant's Members employed by the Respondent, are at liberty to pay union dues directly to the Claimant, under Section 52 of the Labour Relations Act.
11. As long as the Recognition Agreement between the Respondent and KUCFAW is in place, KUCFAW remains the sole collective bargaining agent with regard to all Unionisable Employees of the Respondent. The legal liability attaching to the Respondent to collect trade union dues, must be confined to the sole collective bargaining agent for now.
12. There is currently no legal relationship between the Claimant and the Respondent, to justify grant of an order asking the Respondent to collect trade union dues on behalf of the Claimant.
13. Has the Claimant shown that its Members have been victimized?
14. Evidence of victimization is contained in letters written by the Claimant's Mombasa Branch Secretary to the General Secretary. The letters list a number of Employees, who were said to have been suspended by the Respondent, on account of their association with the Claimant.
15. The letters are dated January and February 2019. The Claim was filed in August 2019. What protection is the Court to accord to Employees who are said to have been victimized over half a year, before protection was sought?
16. There is no Affidavit sworn by any Employee, disclosing that he or she was victimized, and suggesting the reason for victimization. The letter of the Branch Secretary to the General Secretary is a document generated by the Claimant, which has very little weight, in aiding the objective enquiry into the allegation about victimization. There ought to be some evidence shown to originate from the Respondent, disclosing victimization.
17. The Claimant ought to prosecute the main Claim, and establish that it has legal justification to overturn the current industrial relations structure at the Respondent.

IT IS ORDERED:-

a. The Application is declined.

b. No order on the costs.

Dated and delivered at Mombasa this 27th day of February 2020.

James Rika

Judge