



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 124 OF 2017**

*(Before Hon. Lady Justice Maureen Onyango)*

**BAKERY CONFECTIONARY FOOD MANUFACTURING**

**AND ALLIED WORKERS UNION (KENYA)**

**CLAIMANT**

**VERSUS**

**SATISFACTION FINE BAKERS**

**RESPONDENT**

**JUDGMENT**

The Claimant is a registered trade union legally mandated to represent the interests of employees engaged in the food manufacturing and related industries. The Respondent is a company engaged in the bakery business and whose employees are eligible to join membership of the claimant.

The Claimant avers that on 26<sup>th</sup> January 2016 it recruited 16 out of 25 of the Respondent's employees and forwarded check-off forms to the respondent for deduction of union dues. On 25<sup>th</sup> February 2016, the claimant forwarded the recognition agreement for execution at a meeting scheduled for 7<sup>th</sup> March 2016. The meeting did not take place as the Respondent declined to meet the claimant.

The Respondent disputed the Claimant's attainment of a simple majority prompting the Claimant to report a trade dispute. The Respondent was made aware of this fact by a letter but the letter was returned to the Claimant's office unclaimed.

A conciliator was appointed by the Minister to reconcile the parties but only the Claimant attended the conciliation meetings. The Respondent received notices of the meeting but failed to attend. Consequently, the Conciliator issued a certificate of unresolved dispute on 28<sup>th</sup> September 2016 to facilitate the Claimant to institute this claim which it filed on 25<sup>th</sup> January 2017. In the claim, it seeks the following prayers-

- a. A declaratory order to issue directing the Respondent to forthwith execute the recognition agreement in the form and model presented to it by the Claimant within 14 days of delivery of the Judgment herein.*
- b. An order to issue directing the Respondent to forthwith commence deduction of union dues in respect of employees who have acknowledged union membership together with such amounts due from the date when such union dues became due for payment from its kitty.*
- c. Costs be provided for.*

The Respondent did not enter appearance or file a response despite service of summons, the memorandum of claim and mention notices. The matter thereby proceeded to formal proof and was disposed of by way of written submissions.

In its submissions dated 15<sup>th</sup> January 2020, the Claimant submits that since the Respondent has not filed a response, the averments in the claim remain uncontroverted. The Claimant further submits that it has met the threshold set out in section 54 of the Labour Relations Act hence should be awarded prayer 1 of the claim. It is submitted that the Respondent should be condemned to pay the backdated union dues from its own kitty.

The Claimant relies on the case of **Bakery Confectionary Food Manufacturing & Allied Workers Union (K) v Sameer Agriculture & Livestock Limited [Unreported]** where it was held that once an employer receives check off forms, it is obligated to deduct and remit union dues to the union.

## **Determination**

I have carefully considered the claim, the evidence adduced together with the submissions filed. The issues for determination are:-

- a. Whether the Claimant has recruited a simple majority of the Respondent's employees and if it has qualified for recognition by the Respondent.
- b. Whether the Claimant is entitled to the prayers sought.

## **Attainment of Simple Majority**

Section 54 of the Labour Relations Act requires an employer to recognize a trade union who has recruited on its membership a simple majority of unionisable employees for purposes of collective bargaining.

In the instant case the Claimant avers that it recruited 16 out of 25 of the Respondent's employees, a fact which was not controverted by the Respondent due to its failure to file a defence or appear before this court despite service of summons, the claim and mention notices.

The record shows that the Claimant sent to the Respondent check-off forms with 16 members. This represents 66% of the Respondent's unionisable employees. The Respondent disputed the figures vide its letter of 2<sup>nd</sup> March 2016 on the ground that 7 of those employees were on probation while 6 were not its employees. This was however not proved as the respondent failed to attend court or respond to the claim.

The claimant's averments being uncontroverted, it has proved that it has attained a simple majority hence has qualified for recognition by the Respondent for purposes of collective bargaining in accordance with section 54 of the Labour Relations Act.

## **Remedies Sought**

Having found that the Claimant meets the threshold for recognition under Section 54 of the Labour Relations Act and having submitted its check-off forms to the Respondent for deduction of union dues, the Claimant is entitled to the orders sought.

I therefore enter judgment in favour of the claimant against the respondent and order as follows –

- 1. The Respondent is hereby ordered to enter into a recognition agreement with the Claimant within 30 days from the date of judgment.**
- 2. The Respondent is hereby ordered to deduct and remit union dues to the Claimant's registered account stated in the check off forms with effect from June 2020.**
- 3. The Respondent do pay Claimant's costs for this suit assessed at Kshs.50,000.00.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12<sup>TH</sup> DAY OF JUNE 2020**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 has 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**