



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 80 OF 2019

(Before Hon. Justice Mathews N. Nduma)

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT

VERSUS

SILVERLINE SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 16th September 2019. The claimant praying for an order in the following terms *inter alia*:
 - (a) That the court do order the respondent to recognize the claimant union in terms of *Section 54(1) of the Labour Relations Act, 2007* and the respondent to sign the draft Recognition Agreement forthwith.
 - (b) That the court do order the respondent to deduct and remit union dues from its employees who are members of the union including arrears from July 2018 when the respondent received check-off forms from the claimant union.
 - (c) Costs
2. The memorandum of claim and summons to enter appearance were served on the respondent on 16th September 2019 and affidavit of service sworn to by the process server Mr. Joshua Achado was duly filed on 9th December 2019.
3. The respondent did not enter appearance and did not file a statement of defence.
4. The suit is therefore undefended and the court finds that the claimant has proved on a balance of probabilities that it had recruited 11 employees of the respondent as its members and the claimant served the respondent with check-off forms to commence deduction of union dues and remit same to the claimant union.
5. That the respondent was further served with a draft Recognition Agreement to sign and effectively recognize the claimant union which had satisfied the requirements for recognition *under section 54(1) of the Labour Relation Act 2007*.
6. The respondent failed and or neglected to deduct the union dues and sign the recognition agreement in violation of *section 48(3) and 54(1) of the Labour Relations Act 2007*.
7. The claimant has also established that the respondent instead engaged in harassing and intimidating workers who had joined the union with the intention of having them to withdraw their membership.
8. The dispute was reported to the ministry of labour and social protection and the ministry wrote to the respondent on 4th June 2018 requesting the respondent to provide employee records for inspection. A conciliator by the name L.K Bii was appointed to resolve the dispute and he wrote to both parties on 2nd September 2018 inviting them to a joint meeting on 16th October 2018 with their respective proposal.
9. The respondent did not attend the meeting and two other subsequent meetings called by the conciliator. The claimant union made submissions to the conciliator. The conciliator prepared a report produced in court as exhibit 'g'. In terms of the report, the claimant union had recruited 11 out of 13 employees of the respondent as its members which represented 80% of the total workforce. The conciliator recommended that the respondent to recognize the union and sign the Recognition Agreement accordingly immediately.

10. In the final analysis, the court finds that the respondent is obliged by law to recognize the claimant union forthwith and the court makes the following final orders:

(a) The respondent to commence deduction of union dues immediately from all the members of the union and remit the dues to the designated union account.

(b) The respondent is directed to sign the Recognition Agreement within 14 days of this judgment and engage the union in constructive collective bargaining for the benefit of all the employees of the respondent.

(c) The respondent to pay costs of the suit.

Judgment Dated, Signed and delivered at Kisumu this 15th day of October, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. 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 18 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.

Mathews N. Nduma

Judge

Appearances

Mr. Odiege for the claimant union.

Chrispo- Court clerk