



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 46 OF 2020**

**KENYA AVIATION WORKERS UNION.....CLAIMANT**

**VERSUS**

**AGS WORLDWIDE MOVERS LIMITED.....RESPONDENT**

**RULING**

1. The Motion before the Court is the Claimant/Applicant's notice of motion application dated 28<sup>th</sup> January 2020. The Applicant Union sought a temporary order directing the Respondent, its agents, servants or employees to deduct and remit union dues in respect of 76 employees who have signed check-off forms as at 23<sup>rd</sup> April 2019 pending the hearing and determination of the suit. The second prayer is a mandatory injunction compelling the Respondent, its agents, servants or employees to recognize the Applicant as the Union with majority members employed by it to facilitate collective bargaining agreement negotiation pending hearing and determination of the suit. The Applicant also sought a mandatory order compelling the Respondent, its agents, servants or employees to pay union dues for the 76 check off forms forwarded to them by the Claimant pending the hearing and determination of this suit. The motion was premised on the grounds that the Claimant had already clinched a simple majority of the Respondent's employees and should thus be recognized for the purposes of collective bargaining agreement negotiations. The Claimant asserts the Respondent has not been remitting the union dues for the recruited members and that it should be compelled to do so.

2. The Respondent filed a replying affidavit in which it opposed the application as well as the main suit. It asserts that it is based along the Inland Container Depot Road (ICD Road) near the Airport and that sometimes its business involves movement and transportation of its client's property via the airlines as a consumer of services and not as a player in the Airline industry. The Respondent avers that the Claimant never clinched a simple majority of its members for the reason that 45 or so of its employees are casual workers who do not form part of the Respondent's contractual unionisable employees. The Respondent asserts that the Claimant is the wrong union to recruit from the Respondent as its workforce, given the constitution and scope of the Claimant vis-à-vis the business and occupation of the Respondent. It asserts that the Claimant union has to do with the aviation industry yet the Respondent is involved in the business of removals and relocations and that has nothing to do with the Claimant's business. The Respondent avers the correct union to recruit is the Kenya Shipping, Clearing and Warehouses Workers Union.

3. The Claimant Union's dispute with the Respondent is on representation and deduction of union dues. From the material before me, it seems there was a recruitment of some employees of the Respondent which the Claimant Union undertook. It is also apparent that the Claimant Union even received some union dues being deductions made from the employees as exhibited in copies of cheques issued to the Claimant Union. The Respondent now argues that the Union is the wrong union as this is a sector covered by the Kenya Shipping, Clearing and Warehouses Workers Union. The Claimant is a trade union whose objectives are to secure complete organisation in the Union of all the workers in the employment of air navigation services in the country, air transport, workers manning aerodromes, airports and landing strips, balloon safaris, general cargo at the airports, air travel agents and other related activities e.g. aircraft and ground handling in the Republic of Kenya. The Respondent is a storage and removals company and from the clear wording of the Claimant's mandate and the core business of the Respondent it would seem this is not the Union for the sector the Respondent operates in. As Rika J. held in the case of **Kenya Shoe Leather Workers Union v Africa PVC Industries Limited [2017] eKLR**

*The Claimant is prevented under the principle of industrial trade unionism, from stretching its wings of representation to cover an area represented by another Union. It is not necessary that this other Union is present in Court, for the Court to arrive at this finding. The Court can assess the relevance of the Claimant Union in representing Respondent's industry, relying on the material and evidence before it.*

4. It is amply clear that the Claimant is in the wrong place looking for members and despite the previous conduct of the Respondent in making deductions and remittances it does not absolve the Claimant from the accusation that it is stretching its wings of representation to cover an area represented by another Union. It matters not that this other union is not before me as Rika J. held, I can assess the relevance of the Union in representing the Respondent's industry and make a conclusive finding as I have done.

5. It is apparent the dispute was not referred to the Ministry of Labour and Social Services as there seems to be no report from the conciliator nor any communication to/from the Ministry. The Claimant should not have filed the suit before seeking intervention of the Ministry of Labour and Social Services under the Labour Institutions Act framework. There could have been conciliation to save the Court precious time determining the dispute. As a consequence, the Claimant will pay the Respondent costs of the suit as well as costs of the motion. Suit is struck out for lacking a cause of action.

It is so ordered.

**Dated and delivered at Nairobi this 16<sup>th</sup> day of December 2020**

**Nzioki wa Makau**

**JUDGE**