



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 57 OF 2017

TRANSPORT WORKERS UNION.....CLAIMANT

VS

MODERN COAST COACHES LTD.....1ST RESPONDENT

MODERN COAST EXPRESS LTD.....2ND RESPONDENT

RULING

1. By its Notice of Motion dated 20th April 2017 and amended on 26th July 2017, the Claimant seeks the following prayers:

- a) An order directing the 1st and 2nd Respondents to effect check off deductions in respect of their employees who are members of the Claimant Union;
- b) An order restraining the Respondents from intimidating, threatening and/or dismissing their employees who are members of the Claimant Union;
- c) An order restraining the Respondents from forcing unionized employees to revoke their union membership.

2. The application, which is supported by the affidavit of the Claimant's General Secretary, Dan Mihadi is based on the following grounds:

- a) That the Claimant recruited members and forwarded signed check off forms to the Respondents on 23rd November 2016, to effect deductions of monthly trade union dues in accordance with Sections 48 and 50 of the Labour Relations Act, 2007;
- b) That Section 48(2) of the Labour Relations Act requires an employer to make deductions and pay monthly trade union dues from the wages of employees who are members of a trade union and where the union has more than 5 members in a particular establishment;
- c) That the Respondents have declined to effect deduction of union dues and are instead unfairly discriminating, intimidating and threatening unionized employees contrary to Section 5 of the Labour Relations Act;
- d) That the Respondents' agents are in the process of forcing their employees to revoke their union membership thereby denying the employees their constitutional right to union representation;
- e) That there is no rival union claiming membership and/or representation of the Respondents' employees.

3. The Respondents' response is contained in a replying affidavit sworn by their Human Resource Manager, Khalid Mbarak Idha. He deposes that the Claimant is a complete stranger and unknown to the Respondents and has no members within the Respondents' establishment.

4. Idha denies that the Claimant has submitted any signed check off forms to the Respondents nor have the Respondents been notified by any of their employees of membership with the Claimant Union. Further, there is no Recognition Agreement or Collective Bargaining Agreement between the Claimant and the Respondents. Idha further denies that the Respondents are in the process of terminating and/or harassing any of their employees.

5. I have reviewed the Claimant's application together with the supporting affidavit as well as the replying affidavit sworn on behalf of the Respondents which contain various contentious issues of fact. In my view, these issues cannot be determined at the interlocutory stage; they can only be determined after taking evidence in a full trial. I say so because first, the Claimant has not demonstrated receipt of check off

forms by the Respondent; second, the Respondents claim that a number of their employees have denounced the Union and third, the Court was unable to establish whether the check off forms dating as far back as 2016 were still valid in 2019.

6. Moreover, it would appear that the prayers sought in this application are similar to those sought in the main claim. By its application therefore, the Claimant seeks a determination of the entire claim at the interlocutory stage.

7. For the foregoing reasons, the Claimant's application dated 20th April 2017 and amended on 26th July 2017 is declined with costs in the cause.

8. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF FEBRUARY 2019

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JUDGE

Appearance:

Mr. Ndege for the Claimant

No appearance for the Respondent