



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1111 OF 2018

BAKERY, CONFECTIONERY, FOOD MANUFACTURING

AND ALLIED WORKERS' UNION (K)..... CLAIMANT

VERSUS

BRAVA FOOD INDUSTRIES LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 22nd March, 2019)

JUDGMENT

The claimant union filed the memorandum of claim on 02.07.2018 through Judy C. Koech Oyamo. The claimant prayed for:

- 1) 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.
- 2) 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.
- 3) An order directing that the company commences negotiations to put a collective agreement in place within ninety (90) days of delivery of the judgment herein.
- 4) Costs be provided for.
- 5) Any other or further relief deemed fair and fit to grant under the circumstances.

The respondent filed the reply to the statement of claim on 15.08.2018 through Hassan N. Lakicha & Company Advocates.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The court has considered the pleadings, the evidence and the submissions and makes findings as follows.

- 1) As at the time of filing the reference by way of the present suit and after the conciliator failed to resolve the dispute, the claimant exhibited that only 2 employees had signed the relevant Form S. Thus while alleging that the claimant had recruited 17 out of 25 unionisable employees, there was no evidence that the 17 had been recruited. Under section 54 of the Labour Relations Act, 2007, an employer shall recognise a trade union for purposes of collective bargaining if the trade union represents the simple majority of unionisable employees. The Court returns that the claimant has failed to establish that threshold as at time of the reference. The claimant purported to attach a further list of recruited employees on the final submissions. However, the same was never before the conciliator as the conciliation certificate was dated 07.06.2018 and one list of 19 employees was signed on 13.09.2018 and the other two of 15 employees were signed on 11.12.2017 (but there was no evidence of service). Further there was no evidence before the Court that such recruited persons were indeed employees of the respondent. The prayer for recognition will fail.
- 2) As submitted for the respondent the claimant has not shown compliance with section 48 of the Act and union dues cannot therefore be remitted because it has not been shown that at least 5 unionisable employees have been recruited for union dues to be remitted.

3) In any event the respondent has exhibited documents showing that the respondent has outsourced the services otherwise provided by unionisable employees and there is no reason to doubt that evidence so that the outsourced provider of casual employees is liable to remit union dues and not the respondent. Thus, the Court returns that the respondent has established that it cannot deduct and remit union dues for the outsourced casual who are not its employees.

4) As there is no dispute that the claimant is the sector union and is entitled to recruit unionisable employees in the respondent's establishment, each party will bear own costs of the suit towards fostering good labour relationship between the parties in the days to come.

In conclusion judgment is hereby entered for the respondent against the claimant for the dismissal of the memorandum of claim filed herein on 02.07.2018 with orders each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 22nd March, 2019.

BYRAM ONGAYA

JUDGE