



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 393 OF 2015

BETWEEN

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

VERSUS

1. DOCK WORKERS UNION

2. ASSOCIATED VEHICLE ASSEMBLERS LTD.....RESPONDENTS

Rika J

Court Assistant: Benjamin Kombe

Justus Maina Otakwa, General Secretary, for the Claimant

Rufus Ochieng', Executive Officer, for the 1st Respondent

Beatrice Opolo, Advocate, instructed by Federation of Kenya Employers [FKE] for the 2nd Respondent

JUDGMENT

1. Through a Statement of Claim filed on 15th June 2015, the Claimant Union seeks the following orders, mainly against the 1st Respondent:-

- a) 1st Respondent is barred from interfering in the area of representation/jurisdiction of the Claimant Union.
- b) 1st Respondent is compelled to cease intimidating and or inciting the Workers against the Claimant Union and the 2nd Respondent.
- c) The 1st Respondent is ordered to pay costs of this suit to the Claimant.
- d) Any other suitable relief.

2. While Cause Number 393 of 2015 was pending, the 1st Respondent filed a Miscellaneous Application No. 19 of 2016, alleging that the Claimant and the 2nd Respondent, had colluded to have the contracts of 100 Employees of the 2nd Respondent, who are Members of the 1st Respondent, terminated on redundancy. This Application was consolidated with the Cause herein, and declined in a Ruling delivered on 18th July 2016. Parties were ordered to proceed with the main dispute, which touches on interference by the 1st Respondent, with recognition rights granted to the Claimant Union by the 2nd Respondent.

3. The 1st Respondent filed its Statement of Response on 11th May 2018. Its position is that 2nd Respondent's precursor, Kenya Vehicle Manufacturers Association, was incorporated on 20th January 1984. Recognition Agreement between the Association, and the Claimant, was executed on 20th January 1984. It is not a valid Recognition Agreement, having been executed by an unincorporated entity. A number of

unionisable Employees of the 2nd Respondent have resigned from the Claimant, and joined the 1st Respondent. They were refunded trade union dues paid by the 1st Respondent to the Claimant, pursuant to an order recorded at the High Court. These Employees have completely rejected the Claimant Union, and even attempted to register their own Trade Union.

4. The 2nd Respondent supports the position held by the Claimant Union, in its Pleadings and Submissions.

5. Parties agreed in an order recorded by the Court on 19th March 2018, that the Claim is determined based on their Pleadings, Documents and Submissions. The Submissions were confirmed to be on record, at the last mention in Court, on 6th December 2018.

The Court Finds:-

6. The dispute brought to Court by the Claimant is not whether the 1st Respondent should be granted recognition by the 2nd Respondent. There is no Claim filed by the 1st Respondent asking for orders of recognition.

7. The issues are whether the 1st Respondent has encroached on Claimant's area of representation; whether the 1st Respondent should be barred from intimidating or inciting Workers against the Claimant Union and the 2nd Respondent; and whether the 1st Respondent should be ordered to pay the costs of the Claim.

8. There is no evidence to show that the 1st Respondent has engaged in any unlawful encroachment of the Claimant's area of representation. There is similarly no evidence of intimidation or incitement of Employees of the 2nd Respondent, against the 2nd Respondent and the Claimant Union, by the 1st Respondent.

9. All the 1st Respondent has done is to recruit Members, from Employees of the 2nd Respondent, who have disavowed their association with the Claimant.

10. There are grounds shown by the 1st Respondent, to indicate that the Claimant Union may no longer have sufficient numbers, to sustain the sole collective bargaining agency right, granted through the existing Association Recognition Agreement.

11. The Courts have recently downplayed the concept of industrial trade unionism, especially in the hotel industry. They have emphasized the primacy of freedom of association and the freedom to contract.

12. It is therefore not a substantive point of law, for the 2nd Respondent, to posit that the 1st Respondent is not the relevant Trade Union to represent Employees in the motor trade group. Recent decisions from the Courts have tended to overlook industrial trade unionism, in favour of freedom of association. Realities on the ground have shown that the principle of 'one industry, one trade union' is no longer workable. As the Dock Workers Union has recruited a sizable number of willing Employees from the motor industry, it cannot be barred from enjoying recognition from this industry, on the mere ground that its constitution restricts its area of representation to port and marine sector. Demarcation in areas of activity has become blurred, under the Constitution and recent Judgments of our Courts.

13. The Claim before this Court however, is not about recognition of the Dock Workers Union, or de-recognition of the Claimant Union, by the 2nd Respondent. When such a Claim is made, and the Court is properly moved, the Court will be in position to consider and determine the Claim on its merits.

14. The dispute herein as stated above is whether the 1st Respondent has interfered with Claimant's area of representation, or in any way intimidated 2nd Respondent's Employees. There is no evidence of unlawful interference. There is no evidence of intimidation. The 1st Respondent has simply recruited Employees who are dissatisfied with the representation offered by the Claimant Union. The Claim has no merit.

IT IS ORDERED:-

a) The Claim is rejected.

b) Costs shall be paid by the Claimant Union to the 1st Respondent.

c) 2nd Respondent to meet its costs.

Dated and delivered at Mombasa this 15th day of March 2019.

James Rika

Judge