



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1406 OF 2014**

**KENYA ENGINEERING WORKERS UNION.....CLAIMANT**

**- VERSUS -**

**WIKA INDUSTRIES LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday 10<sup>th</sup> April, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 20.08.2014 in person. The claimant alleged refusal by the respondent to sign a recognition agreement. The claimant prayed for:

- a. The parties to sign the recognition agreement within 14 days since the claimant have successfully recruited the respondent's unionisable employees as required by section 54 of the Labour Relations Act, 2007.
- b. A declaration that the respondent's unionisable employees have a right to join the union as granted to them by the Constitution of Kenya, labour laws, and ILO convention and their union is entitled to recognition as required under section 54 of the Labour Relations Act, 2007 to pave way for their union to negotiate better terms and conditions of employment which is not there at present.
- c. To deduct union dues per section 48 of the Labour Relations Act, 2007.

The claimant's case is that it has satisfied the conditions for recognition by the respondent and the parties should sign the relevant recognition agreement. The claimant submitted that it had recruited all the unionisable employees in the respondent's establishment as per the exhibited check off forms which show that the claimant had recruited 43 employees. The claimant reported a trade dispute by the letter dated 08.10.2012 but the letter by the conciliator dated 31.05.2013 shows that the respondent failed to attend the meetings and to submit the memorandum. The conciliator found that the respondent had been uncooperative and unwilling to have the dispute finalised. The case was referred to the Court under section 73 of the Labour Relations Act, 2007.

Despite service the respondent failed to enter appearance, to file a response or to attend at the hearing.

The Court has considered the material on record and returns that the claimant having recruited all the unionisable employees in the respondent's establishment at the material time and there being no dispute that the claimant is the correct sector union, the claimant's suit will succeed.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a. A declaration that the claimant is entitled to recognition by the respondent and the parties to conclude the relevant recognition agreement in accordance with the law not later than 01.07.2019 and thereafter negotiate a collective bargaining agreement as per the applicable law.
- b. The respondent to forthwith deduct and remit union dues for its employees being members of the claimant and the deductions to start not later than the end of April, 2019.
- c. The respondent to pay part of the claimant's costs of the suit fixed at Kshs.30, 000.00.

**Signed, dated and delivered** in court at **Nairobi** this **Wednesday 10<sup>th</sup> April, 2019**.

**BYRAM ONGAYA**

**JUDGE**