



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 2131 OF 2014**

*(Before Hon. Lady Justice Maureen Onyango)*

**BANKING, INSURANCE AND FINANCE UNION (KENYA).....CLAIMANT**

**VERSUS**

**STANDARD CHARTERED BANK OF KENYA LIMITED.....RESPONDENT**

**RULING**

Although this case was coming up for judgment, I have found it necessary to call for further evidence to enable the court reach a fair determination in the matter, as the decision would have far reaching consequences on the relationship between the parties and the banking as an industry sector.

The Claimant union and Kenya Bankers Association have a valid recognition agreement signed on 4<sup>th</sup> October 2000. Subsequently they have negotiated several CBAs. The relevant CBA is the one signed on 19<sup>th</sup> August 2013. The claim herein is that the Respondent promoted members of the Claimant to management positions without change of duties to remove them from membership of the union with the result that no union dues were remitted to the Claimant. As a result, the Claimant filed this cause seeking the following orders:

- a. That the Court should find and order that the Respondent is in violation of the parties CBA and Recognition Agreement by un-procedurally and unlawfully promoting section heads (supervisors), check clerks and clerks to management cadre and subsequently conscripting such employees out of the Claimant's membership.
- b. That the Court should find and order that the Respondents has underpaid all the promoted employees section/departmental heads, check clerks and the said underpayments should be computed and paid to the affected employees and the lower salaries should then be enhanced to match with the CBA scales as per each grade since the present action of the bank abuses Article 41 of the Constitution on fair labour practices and fair remuneration.
- c. That the Court should find and declare that all employees and more specifically Band 8 and Band 9 have a right to join a trade union of their choice and to bargain collectively in line with the law and the Constitution.
- d. That the Court should further find that hindering workers from joining the union and or conscripting the staff from the union membership is bad in law and against the ILO Conventions 98 and 87.
- e. That the Court should order that all employees who were conscripted from union membership should have their membership reinstated and all the unpaid union dues be paid directly by the Respondents and not from the affected employees.
- f. Any other appropriate relief as the Court may deem fit to grant.
- g. Costs of the suit.

The Claimant posits that pursuant to the CBA and the Recognition Agreement, section heads (supervisors), check clerks, clerical staff and copy typists, technical staff and subordinate staff are unionisable. However, the Respondent introduced new managerial positions of Band 8 and 9. Consequently, section heads and check clerks were promoted but continued to carry out the same duties. This led to the reduction of unionisable employees from 700 to 400

The claimant avers that the employees did not resign from the union because the procedure was not followed. Instead, they were forcefully stopped from contributing union fees. Before this, they had paid monthly subscriptions and had benefited from the terms and conditions of the CBA.

It is the Claimant's position that this amounted to unfair labour practice as there were no new management responsibilities, powers or authority attached to these titles. The Claimant acknowledges that the Respondent's structure is not easy to comprehend. Further, these employees are earning salaries below the prescribed unionisable scales.

For the Respondent it is submitted that its Association is, like the claimant, entitled to enjoy the rights enshrined in the Constitution and the ILO Convention. That the issue before this Court ought to be dealt with between the Association and the claimant through negotiations as provided under Clause 19 of the Recognition Agreement. The Respondent contends that analyzing this issue in isolation of the entire banking industry's job grading is to deny it the benefit of freedom of association.

The Respondent avers that the Recognition Agreement lists the non unionisable members of staff as those handling confidential matters, those in directive and administrative positions, those in representational positions and those in supervisory positions.

The Respondent contends that efforts to refer the dispute to the Joint Negotiating Council constituted pursuant to Clause 18 (e) of the Recognition Agreement was resisted by the Claimant with the view of denying it the benefit of enjoying its right to membership of the Association and contrary to Article 41 (3) of the Constitution.

The Respondent further contends that this suit is improperly before the court as it is improperly suited to this suit. The Respondent also contends that an employee promoted from union ranks ceases to pay union dues as their terms and conditions of service are determined by the Respondent's management directly. It is the Respondent's contention that its structure is aligned to its strategy and is not defined by union requirements.

The matter was dispensed with by way of written submissions.

### **Determination**

The issue before this Court for determination is whether the Respondent is properly joined to this suit, whether Band 8 and 9 Respondent's employees are unionisable employees and whether the Claimant is entitled to the orders sought.

The Respondent has submitted that it is not properly joined because the Recognition Agreement and CBA were negotiated between its Association and the Claimant. As such, it would have been ideal for its Association to be joined instead of the Respondent as it was better placed to address the issues raised.

Section 2 of the Memorandum of Agreement between the Claimant and Kenya Bankers Association (KBA) provides as follows:

*"The Union shall be recognized as the negotiating body representing employees of members of the Association with the exception of officers who for the purposes of this Agreement shall be defined as follows:*

*"Those who exercise confidential, directive, administrative, representational or supervisory functions and the lowest level of management to which disciplinary matters and decisions are delegated."*

Appendix C of the Recognition Agreement defines supervisory as:

*"All those officers who supervise the work of others, who are responsible for the activities of a section of the Bank, who are required by management as part of their duties to make effective recommendations in connection with hiring, firing, promotion or disciplinary action and to who subordinate staff would apply in the first instance for the remedy of grievances if, in connection with the foregoing, the exercise of such authority requires independent judgment."*

At page 19 of the Claimant's Additional Bundle of Documents, is the Respondent's Human Resource Manual which reflects that Grade 8 to 9 consists of the Supervisory grade. It is the Claimant's case that the Respondent's promotion of section heads to management band 8 and 9 was ill intended so as to reduce the number of unionisable employees.

Level of union representation is a matter that ought to be discussed under a recognition agreement. I do appreciate the claimant's concerns that the respondent may be artificially promoting staff who ordinarily perform unionisable staff jobs to deliberately remove them from the collective bargaining agreement. I also appreciate the respondent's arguments that this is a matter that affects all members of the Association and should be discussed at that level.

It is my view that the court has not been given sufficient information to determine whether or not the claimant's concerns are valid. A decision either way would in my opinion only be valid made after considering the job descriptions of the employees whom the union accuses the respondent of promoting to remove them from the membership of the union but without change in their duties and responsibilities. No job descriptions were availed to the court.

For these reasons I defer judgment and invite parties to address the court on the tasks carried out by the staff in Band 8 and 9 of the respondent.

Date will be taken in court.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF JUNE 2019**

**MAUREEN ONYANGO**

**JUDGE**