



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 354 OF 2018

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND
ALLIED WORKERS.....CLAIMANT**

VERSUS

CELLO THERMOWARE LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Atela Industrial Relations Officer for the Claimant

Oluga & Company Advocates for the Respondent

JUDGMENT

1. The dispute involves execution of Recognition Agreement between the Parties, under Section 54 (1) and (2) of the Labour Relations Act 2007.
2. The peripheral issue involved failure by the Respondent to deduct and remit Trade Union dues in favour of the Claimant.
3. The dispute was reported to the Ministry of Labour. The Conciliator, in a letter dated 24th April 2017, addressed to the Parties, confirmed that:
 - a) There was no issue in dispute with regard to Trade Union dues. The Respondent, it was observed, had been deducting and remitting Trade Union dues in favour of the Claimant.
 - b) On Recognition Agreement, the Conciliator recommended that parties sign Recognition Agreement, as the Claimant had recruited the required number of Employees.
4. The Respondent did not accord the Claimant recognition, compelling the Claimant to file its Statement of Claim on 30th May 2018.
5. The Claimant seeks the following Orders:-
 - a) Recognition.
 - b) The Respondent continues to deduct and remit trade union dues.
 - c) Claimant's Members, Employees of the Respondent, are not victimized on account of their association with the Claimant.
 - d) Respondent to engage the Claimant in Collective Bargaining within 30 days of this Judgment.

e) Costs to the Claimant.

6. Prayers (c) and (d) were not before the Conciliator, but the Main prayers, (a) and (b) were.

7. The Respondent filed its Statement of Response on 18th March 2019. It is accepted that the dispute over Trade Union dues, was determined at conciliation. The Respondent disputes however, the position advanced by the Claimant, to have recruited a simple majority of Unionisable Employees, to merit recognition under Section 54 (1) (2) of the Labour Relations Act. The Respondent states that at the time of filing its Response, the Claimant did not have sufficient number of Employees, to be accorded recognition. Due to various reasons such as resignation, death, absconding and expiry of contracts, the number has fluctuated. The Respondent at the time, had 26 Employees. The Claimant did not show it had recruited at least 14 of these Employees to earn recognition. Other than this, the Respondent takes issue with the procedure adopted by the Conciliator, submitting that the procedure did not conform with the Labour Relations Act.

8. Parties agreed on 19th March 2019, to have the Claim considered and determined under Rule 21 of the E&LRC (Procedure) Rules 2016. They confirmed the filing of Submissions on 20th June 2019.

The Court Finds:-

9. The Parties confirmed, and the Conciliator was satisfied, that there is no pending dispute with regard to deduction and payment of Trade Union dues. Prayer at paragraph 36 of the Statement of Claim, on deduction and payment of Trade Union dues has no basis and is declined.

10. Paragraph 37 refers to victimization of Employees on account of their association with the Claimant. There is nothing on record to establish such victimization. The prayer at paragraph 37 is declined.

11. The Conciliator, upon examining records availed by the Parties, concluded that the Claimant had recruited the required number of Employees, pursuant to Section 54(1)(2) of the Labour Relations Act, to warrant recognition. The Conciliator indicates, in his letter of 24th April 2017, that Parties agreed to execute the Recognition Agreement.

12. There is no justification for the Respondent to submit that owing to factors such as death, resignation, absconding and expiry of contracts, the Claimant no longer has a simple majority of Unionisable Employees. There is no convincing evidence placed before the Court of dead Employees, resigned Employees, absconding Employees and Employees whose contracts expired. The numbers cited by the Respondent in its Submissions refer to the time the Response was filed, not the time Parties agreed before the Conciliator, that a simple majority had been attained. The numbers cited by the Respondent are not relevant, and have not in any event been supported by employment records. Resistance to recognition based on these numbers, and the procedural issues raised by the Respondent fade, in light of the agreement between the Parties, on the core substantive issue in dispute. The Parties agreed way back on 24th April 2017, to execute Recognition Agreement. ***The prayer for Recognition is allowed.***

13. ***The prayer for negotiation of CBA must follow grant of recognition. Recognition under section 54(1) (2), is granted to pave way for collective bargaining.***

IT IS ORDERED:-

a) The Respondent shall execute Recognition Agreement with the Claimant, within 30 days of delivery of Judgment.

b) Parties to negotiate, execute and register Collective Bargaining Agreement, within 60 days of executing Recognition Agreement.

c) No order on the Costs.

Dated and delivered at Mombasa this 31st day of July 2019.

James Rika

Judge