



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**Cause No. 264 Of 2017**

**(Before Hon. Justice Mathews N. Nduma)**

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

**VERSUS**

**SOJPAR LIMITED.....RESPONDENT**

**JUDGMENT**

1. The claimant seeks the following reliefs:

- i. The court to order the respondent to recognize the union with immediate effect or in the alternative order for a ballot.
- ii. Respondent to remit from its own resources as it has failed to deduct union dues since August, 2016.
- iii. Costs of the suit.

**Facts of the claim**

2. The claimant is the correct union for the sector in which the respondent operates and between 7<sup>th</sup> to 20<sup>th</sup> August 2016 recruited 57 employees of the respondent out of possible 75 into its membership translating to 76% of the respondent's employees.

3. Check-off forms evidencing the recruitment were forwarded to the respondent vide a letter dated 17<sup>th</sup> August 2016 and in terms of Kenya Gazette Notice No. 11153 and 7515 of 8<sup>th</sup> August 2013 and 2<sup>nd</sup> July 2011. The forms and forwarding letter were presented to court as annexure "2(a)" to the memorandum of claim.

4. The respondent did not honour the request to recognize the union and to deduct union dues. The claimant union reported a dispute to the Ministry of Labour on 25<sup>th</sup> November 2016. A conciliator by name L.K Bii was appointed and he called for the parties to make their submissions to him. Only the Union submitted its submissions to the conciliator. The conciliator prepared a report dated 31<sup>st</sup> May 2017 in which he recommended that the respondent do deduct and remit union dues from the employees who had voluntarily joined the union.

5. The respondent did not comply with the recommendation and a certificate of unresolved dispute was issued on 3<sup>rd</sup> February 2017 hence this suit.

6. The facts set out in the memorandum of claim are supported by an affidavit by John Miduri, the Kisumu Branch secretary of the Union sworn on 13<sup>th</sup> July 2017 and filed on 14<sup>th</sup> June 2017 in support of a notice of motion of the even date that sought the claim to be certified urgent and be heard on priority basis in terms of *Section 87 of the Employment Act 2007 and Employment and Labour Relations Court (Procedure) Rules 2016*.

**Response to claim**

7. The respondent filed a response to the memorandum of claim on 29<sup>th</sup> June 2017 in which it states that the respondent had upon receiving

the recommendations by the conciliator set in process the motion to comply with the same and is fully determined to comply with the recommendations by the conciliator.

8. The respondent however states that some of the employees mentioned in the check-off forms have ceased to be employees of the respondent or have declined to join the claimant.

9. The respondent filed a witness statement of Sunil Kumar Chaganlal Shah, a director of the respondent. The respondent further filed list of documents on 25<sup>th</sup> August 2017 in which it has demonstrated that it commenced deduction of union dues pursuant to the recommendation of the conciliator and interim orders of the court.

10. The deductions were done and remitted on 4<sup>th</sup> July 2017. The respondent further indicated in a letter dated 3<sup>rd</sup> July 2017 that four (4) employees of the respondent who had joined the union as member no. 1622; 1635; 1643 and 1644 respectfully had ceased to be employees of the respondent. From the documents presented by the respondent deduction had been made from 53 employees.

11. A report was filed by the ministry of labour pursuant to court order of Maureen Onyango – J. of 28<sup>th</sup> September 2019 for the ministry to carryout investigation and file a report. The report indicates that the respondent had 74 unionsable employees and 29 wished to remain in the union while 23 wished to withdraw from the union.

12. The parties field written submission and decided not to adduce any oral evidence. An order was made to that effect on 29<sup>th</sup> October 2018 and directions given accordingly.

### **Determination**

13. The issues for determination are:

i. Whether the claimant union had at the time of filing this suit satisfied the requirements for recognition in terms of *Section 54(1) of Labour Relations Act*.

ii. Whether the Claimant is entitled to the reliefs sought.

14. The court has dealt with both issues at the same time. It is not in dispute that the respondent commenced deducting union dues from 53 of its unionsable employees out of 57 unionisable employees on 4<sup>th</sup> July 2017 pursuant to a recommendation from the Labour Office, and conciliator Mr. Bii. It is also not in dispute that as at that date, the claimant had still in its membership 53 out of the 57 employees it had recruited as its members out of a possible 74 employees.

15. Section 54(1) of the Labour Relations Act, 2007 provides:

**“An employer including an employer in the Public Sector, shall recognize a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionsable employees employed by the group of employers or the employers who are members of the employers’ organization within a sector”**

16. The operative words here are *“shall recognize a trade union”*. In other words, it is mandatory for the employer to recognize the union once it has recruited a simple majority of the employer’s unionsable employees.

17. It has been proved and is in fact admitted by the respondent that as at the time of coming to court, the claimant union had recruited 76% of the unionsable employees but four (4) had ceased to be employees of the respondent.

18. The subsequent report by the ministry of labour does not in any way detract from this fact.

19. The court finds therefore that the claimant union has satisfied the requirements under *Section 54(1) of the Labour Relations Act* and indeed, the respondent has effected check-of system in respect of 53 such employees duly recruited by the union.

20. The respondent is bound to sign a Recognition Agreement with the claimant union and continue to deduct and remit union dues in respect of the 53 employees.

21. The respondent had shown willingness from the commencement of this suit to comply with the recommendations of the conciliator and it proceeded to do so.

22. In the final analysis judgment is entered in favour of the claimant union as against the respondent and the following orders made:

i. The respondent to sign a recognition Agreement with the claimant union with immediate effect.

ii. The respondent to continue deducting and remitting union dues to the claimant union as it is already doing.

iii. The respondent to pay the costs of the suit

**Judgment Dated, Signed and delivered this 9<sup>th</sup> day of July, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Nyumba for claimant union

M/S Pundit for Respondent

Chrispo – Court Clerk