



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 64 OF 2018

BETWEEN

AMALGAMATED UNION OF KENYA METAL WORKERSCLAIMANT

VERSUS

KAYCEE AUTO SPARESRESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Claimant Union represented by Industrial Relations Officer, George Ondiege

A.B. Patel & Patel, Advocates for the Respondent

JUDGMENT

1. The Claimant Union, through its Statement of Claim filed on 7th February 2018, seeks in main, to have the Respondent ordered to sign Recognition Agreement with the Claimant, and ordered to deduct and remit trade union dues in favour of the Claimant.
2. The Claimant identifies itself as a registered Trade Union, representing metal and motor industries. The Respondent Company is engaged in the business of importation and dealership of motor vehicle spares and accessories.
3. The Claimant recruited 11 Unionisable Employees of the Respondent, and forwarded Check-Off Forms and Draft Recognition Agreement to the Respondent. The Respondent did not act on these forwarded documents. The Claimant was compelled to report the existence of a Trade Dispute to the Cabinet Secretary for Labour, on 30th June 2017. A Conciliator was appointed, who invited the Parties for conciliation meetings. The Respondent refused to submit to the mechanism of conciliation. The Conciliator issued Certificate of Unresolved Dispute under Section 69 of the Labour Relations Act 2007. The Claimant states that the Respondent had a total of 15 Unionisable Employees, the recruited number of 11, amounting to 73.3% well above the required standard of a simple majority under Section 54 of the Labour Relations Act.
4. The Respondent filed its Statement of Response on 9th October 2018. It is not conceded that the Claimant is the right and relevant Trade Union, to represent Unionisable Employees of the Respondent. The Respondent did not receive the Check-Off Lists. The Lists in any event do not disclose payroll numbers, and union membership numbers. 2 of the named Employees had left the Respondent at the time the Claim was filed, while another had resigned as a Member of the Claimant Union. The Respondent had 22 Unionisable Employees at the time of filing the Claim. Recruitment of 11 Unionisable Employees, would not meet the requirement for simple majority.
5. On 26th March 2019, the Parties consented to have the dispute decided on the strength of the record. They confirmed filing of Closing Submissions on 18th July 2019.

The Court Finds:-

6. Annexure 1 of the Statement of Claim, comprises the Check-Off Lists, showing the details of Employees who were recruited by the Claimant.

7. The 1st List has 10 names. The 10 Employees are said to have been recruited between November 2014 and July 2016.
8. On the column indicated to contain payroll numbers, it is shown against 2 names – Nathaniel Karisa and Chinago Kumba Gereza- ‘left.’ It is not clear who made the indication ‘left.’ If the 2 Employees left the Respondent, why does the Claimant Union include them in the Check-Off Lists, and count them among the 11 Members in its rank and file, at the time of submitting the Check-Off Lists?
9. Still on the payroll column, the payroll numbers are not indicated. What is shown on the column, are just ticks, and numbers 1 up to 10. These are not payroll numbers which would show that the named persons were Employees of the Respondent. Check-Off Forms must reflect employment details of recruited Employees, as clearly as possible.
10. Evidence of Union Membership is equally inadequate. There are only 2 Employees, Nathaniel Karisa and Alfani Charo, whose membership numbers are disclosed. Karisa as stated above left employment. Alfani has both payroll number and membership number disclosed. Why not the other Employees? But even in the case of Alfani, there is no clarity on the date of his recruitment. It is indicated as 16/8012. What date is this?
11. There are documents exhibited by the Respondent, which the Claimant did not react to, in a manner that would aid Claimant’s pursuit of recognition. These include the documents showing: Chinago Gereza left employment way back in October 2015; Nathaniel Karisa resigned from the Respondent on 15th March 2016; Alex Moki resigned from the Claimant on 3rd January 2018; and Pole Mwalolo was dismissed for stealing on 4th October 2018. In addition, the Claimant did not respond either by way of Additional Documents or Supplementary Affidavit, to the Staff List exhibited by the Respondent, dated 6th February 2018.
12. Encountered with the evidence presented by the Respondent, the Court feels that the Claimant Union, should have presented direct evidence, even if by way of Affidavits, from the Employees alleged to be its Members. There is no such evidence on record which would enable the Court to conclude, that the Claimant, has met the requirement of Section 54 [1] of the Labour Relations Act 2007, to be granted recognition. Without proper Check-Off Lists, it is not possible also, to have orders for deduction and remittance of trade union dues. The Employees who are Members of the Claimant Union must first be clearly indentified. A Recognition Agreement is a Labour Contract, with far-reaching consequences, and must therefore be based on clearly established facts. The total number of Unionisable Employees working for the Employer, must be shown through payroll records, and recruited Employees authenticated through tools, such as trade union membership numbers. The standards for grant of recognition must be met. The Claimant should go back to the ground, and undertake fresh recruitment, if it is to be considered for recognition.

IT IS ORDERED:-

- a) The Claim is declined.*
- b) No order on the costs.*

Dated and delivered at Mombasa this 26th day of September 2019.

James Rika

Judge