



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 273 OF 2018

(Before Hon. Justice Mathews N. Nduma)

KENYA HOTELS AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

WIGOT GARDENS LIMITED.....RESPONDENT

JUDGMENT

1. The dispute concerns refusal by the respondent to sign recognition agreement with the claimant union and refusal to deduct union dues in favour of the union.
2. The suit was filed on 30th July 2018 in which claimant union has pleaded that in February 2016, it recruited 27 out of the respondent's 40 unconsolidated employees which constitutes 67.5%. Claimant union relies on documents annexed to the claim and marked '1' to '8' in support of the claim. A verifying affidavit of Chadwick Oloto Ngono sworn on 11th June 2018 attests to the correctness of the averments in the statement of claim.
3. The check-off form containing the names, signatures and date of recruitment was served upon the respondent on 13th April 2016. On 5th July 2016, a letter dated 5th July 2016 was sent to the respondent to sign the Recognition Agreement on 19th July 2016. The respondent did not sign the Recognition Agreement nor deduct union dues. Dispute was reported to the ministry of labour on 7th November 2016 and a conciliator Mr. L.K Bii was appointed to resolve the dispute. Both parties made their submissions to the conciliator. The conciliator recommended that the respondent do recognize the union. The report was filed as appendix '8'.
4. The respondent opposed the claim by a memorandum of response filed on 8th November 2018. The respondent denies that any of its employees were members of the claimant union and states that it could not sign a Recognition Agreement with the claimant union. The respondent states that it was not served with any ministerial order nor the required forms in terms of *Section 48 of the Labour Relations Act*. Respondent states that it did not participate and was unaware of any reconciliation proceedings.
5. Respondent states that its employees have denied any association with the claimant.
6. The claimant union did not call any witness to testify in support of the claim. The respondent called RW1 Felix Ongeyo Owiti, the General Manager of the respondent who adopted a witness statement dated 24th January 2019 as his evidence in Chief.
7. RW1 states in the statement that the respondent did not conclude any Recognition Agreement with the claimant union as it was unaware of any of its employees being members of the claimant. RW1 testified further that it was unaware of the alleged conciliation proceeding and did not participate in any. RW1 further testified that its employees are members of Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA). Respondent prays the suit be dismissed with costs.

Determination

8. A union that wishes to be recognized by an employer must prove that it is a relevant union in the sector it wishes to operate. That it has recruited a simple majority of the employees of the targeted employer as its members in terms of *Section 54 of LRA*. That it has obtained a ministerial order in terms of *Section 48 of Labour Relations Act* to effect deductions of union dues from the members' salaries.
9. The onus of proving these matters on a balance of probabilities lies on the union which seeks for court orders from the court. The claimant union in this matter chose not to adduce oral evidence in support of its claim. The union did not cause to be admitted any witness statement in support of its claim either. The union merely relies on a statement of claim and annexures thereto. These pleadings do not constitute evidence unless the respondent admits the averments in the statement of claim and the attached documents.

10. RW1 testified in court and denied the particulars of claim in its entirety.

11. Accordingly, the claimant union has failed to discharge the onus placed on it in terms of *Sections 54(1) and 48 of the Labour Relations Acts as read with sections 107 and 108 of the evidence Act Cap 80 Laws of Kenya.*

12. The claimant union has therefore failed to prove its case on a balance of probabilities. The claim lacks merit and is dismissed with costs.

Judgment Dated, Signed and delivered this 19th day of September, 2019

Mathews N. Nduma

Judge

Appearances

M/S Mwaka for Claimant union.

Mr. Mugo for Respondent

Chrispo – Court Clerk