



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 91 OF 2018

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

HEBATULLAH BROTHERS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant in this case is a Trade Union registered in Kenya with the mandate to represent interests in the Engineering Sector.
2. By its claim brought by Memorandum of Claim dated 28th February 2018 and filed in court on even date, the Claimant seeks orders to compel the Respondent to deduct and remit union dues and to convert long serving casual employees to permanent employment.
3. The Claimant further seeks an order directing the Respondent to issue appointment letters to employees who have served the Company for at least 4 months.
4. The Respondent did not respond to the claim in spite of due service. The Claimant chose to prosecute its claim by way of written submissions.
5. The Claimant states that the Respondent's failure to deduct union dues and convert long serving casual employees to permanent terms of employment is in violation of Article 41 of the Constitution, Section 48 of the Labour Relations Act, Section 37 of the Employment Act and Clause 20 of the Collective Bargaining Agreement (CBA).
6. The Claimant submits that the parties have a duly signed Recognition Agreement under Section 54 of the Labour Relations Act. The parties have also signed a CBA under Section 57 of the Act.
7. According to correspondence filed by the Claimant, the dispute was referred to conciliation but the Respondent failed to participate in the conciliation proceedings. The Conciliator therefore certified the dispute unresolved by letter dated 29th May 2017.
8. I have looked at the Claimant's claim and note that although the Claimant makes specific prayers on deduction of union dues, conversion of casual employees to permanent terms of employment and issuance of appointment letters, no evidence was presented to back the claim.
9. Apart from a check off form dated 17th September 2016, the Claimant did not present any evidence to support its claim.
10. While addressing the issue of membership recruitment, towards recognition of a Trade Union for purposes of collective bargaining in *Bakery Confectionery, Food Manufacturing and Allied Workers Union (K) v Mombasa Maize Millers Limited & 3 others [2016] eKLR* my brother, **Rika J** stated the following:

“recognition once granted, must therefore not be viewed as cast in bronze. Labour is highly mobile. It is not inconceivable that Employees upon which the initial recognition is made, all move out of the workplace for various reasons after recognition is granted, leaving the Trade Union with an empty shell of a collective bargaining unit.”

11. In similar fashion, this Court in *Kenya Shoe and Leather Workers Union v Crown Industries Limited & another [2017] eKLR* held as follows:

“Recognition is a matter of verifiable numbers and in the absence of tangible evidence of recruitment of a simple majority, the Court has no basis to order recognition.”

12. The Claimant's claim does not specifically mention recognition. However, the requirement for tangible evidence applies in equal measure in a claim for deduction of union dues. I say so because union dues do not come from the employer's coffers; they are deducted from the salaries of specific employees. For the simple reason that labour is a fluid moving target, a check off form signed in 2016 cannot be the basis for an order for deduction of union dues in 2019.

13. In the result, the Court finds and holds that the claim for deduction of union dues is unsupported by evidence and therefore fails.

14. Regarding the claims for conversion of employment terms from casual to permanent terms and issuance of appointment letters, the affected employees were not identified. The Court does not issue orders at large and these claims must also fail.

15. In the end, the Claimant's entire claim fails and is dismissed with no order for costs.

16. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 24TH DAY OF OCTOBER 2019

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JUDGE

Appearance:

Mr. Araka for the Claimant

No appearance for the Respondent