REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 994 OF 2010

KENYA HOTELS AND ALLIED WORKERS UNION....CLAIMANT

VERSUS

THE KENTMERE CLUB (2986) LTD.....RESPONDENT

J U D G E M E N T

1. By Memorandum of Claim filed on 3rd September, 2010 the Claimant Union averred that the management of the respondent had refused to sign a recognition agreement yet the Union had recruited the simple majority (51%) of the unionisable employees in the respondent's employment.

2. According to the Claimant between October, 2008 and March 2009 the Union recruited 49 Unionisable employees to her membership by signing check-off forms which is about 96% of the unionisable workforce.

3. The management immediately effected union dues deductions which was still ongoing in compliance with section 48 of the LRA 2007.

4. On 3rd July,2009 the Claimant forwarded a recognition Agreement to the respondent's management and proposed for a meeting on 13th July, 2009 to sign the same. The respondent however communicated to the Claimant through telephone that the meeting of 13th July,2009 would not take place because they were not willing to sign the recognition agreement.

5. The dispute was consequently reported to the Minister as a trade dispute and the Minister appointed a conciliator who invited the parties to a joint meeting but the respondent never turned up in all the meetings leading the conciliator to issue a certificate of unresolved dispute hence a referral to the Court.

6. The respondent on their part through one Hezron Owalo state among others that they knew they were sued for failing to recognize the Claimant Union when they were served with summons and suit.

7. According to Mr. Owalo, the current director took over the management of the company in 2013 and since that time they have been remitting union dues to the Claimant union and they were never informed of the existence of a dispute between the Claimant union and the previous management.

8. The respondent denied that the Claimant had at any time tried to recruit or hold any meeting with workers in the respondent's premises or notifying the respondent of any wish to hold a meeting with the alleged members. He further stated that the respondent has a workforce of 53 workers and that the Union has only recruited 9 out of them.

9. In his submissions in support Mr. Simiyu submitted among others that the Claimant union still commanded a simple majority of unionisable employees despite the respondent having retrenched a sizeable number of employees.

10. According to the Claimant it had 9 out of 17. That is to say 9 permanent staff and 8 annually contracted. Mr. Simuyu further urged the Court to note that since the inception of the dispute two parties had proposed to be enjoined in the matter being Kenya Association of Hotel Keepers and KUDHEIHA. KAHKA has since lost her locus standi and withdrew membership from the association while KUDHEIHA the 2nd proposed interested party has never filed any pleadings in the Court therefore lacked grounds to proceed in the matter.

11. The respondent in brief submissions stated that it relied on a case filed by the Claimant being cause No 1588 of 2015 where about twenty of the people the Claimant claimed to have recruited in 2008 had either resigned or retired from work and therefore the Claimant had lost the 51% of the employees of the respondent.

12. The respondent further stated that the CBA the Claimant was using was between KUDHEIHA and KAHK.

13. This suit was filed in 2010 8 years ago. It involves a dispute over recognition and CBA negotiations. It is conceded by both parties that the unionisable staff at the respondent has significantly dwindled.

14. Recognition is a transient process. That is to say an employer is not bound to sign a recognition agreement where at the point in time it does not have in its employ a simple majority of unionsable employees either through retrenchment defection to a rival re-union or other causes.

15. Further recognition can never be retrospective. There is either in existence the requisite simple majority at the time in order to recognize or not. The Court cannot make a retrospective recognition order.

16. In the circumstances the order that commands itself to make at this stage is that considering the time that has lapsed since the dispute was filed and in view of the fact that the respondent could have undergone significant staff downsizing, coupled by the fact that the respondent has denied refusing the Claimant access to recruit and or address members recruited , the Court will order that the claimant upon reasonable notice and at convenience of the respondent allows the respondent access to its premises for purposes of recruiting unionsable members and if a simple majority as provided under the Labour Relations Act is attained, both parties should sign a recognition agreement.

17. It is so ordered.

Dated at Nairobi this 18th day of October, 2019

Abuodha Jorum Nelson

Judge

Delivered this 18th day of October, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

……for the Claimant and

…….....for the Respondent.

Abuodha J. N.

Judge