



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 292 OF 2018

(Before Hon. Justice Mathews N. Nduma)

BAKERY, CONFECTIONERY, FOOD MANUFACTURING AND

ALLIED WORKERS UNION (K).....CLAIMANT

VERSUS

J.K. BAKE LIMITED.....RESPONDENT

JUDGMENT

1. The claimant union filed the suit on behalf of ten grievants listed under paragraph 11 of the memorandum of claim dated 11th September 2018 praying for orders:

- (a) Directing the respondent to recognize the claimant union.
- (b) Directing the respondent to deduct and remit union dues in respect of all the members of the claimant union including arrear payments, to their detriment.
- (c) Prohibiting the respondent from harassing, intimidating and victimizing union members.
- (d) Costs of the suit.

2. The claimant union relies on a witness statement by Danchael Mwangure the General Secretary of the claimant union dated 11th September 2018 and list of documents marked '1' to '4' attached to the memorandum of claim. The witness statement and list of documents plus written submission are relied upon the parties having agreed to dispense with *viva voce* evidence.

3. The facts of the claim are that on or about 12th June 2018, the claimant recruited 53 employees out of 66 unionisable employees of the respondent. The union notified the respondent and forwarded to the respondent check-off forms requiring the respondent to commence deduction of union dues in terms of *Section 48 of Labour Relations Act 2007*. The union further and on 19th June 2018 sent to the respondent Draft Recognition Agreement and requested a meeting on 28th June 2018 for the signing of the Agreement.

4. That respondent requested for time to consult legal counsel before ceremony. The respondent however started harassing, intimidating and victimizing union members. The union obtained an injunction stopping this conduct, however up to ten members of the union have since been dismissed from employment.

5. Dispute was reported to the Ministry of Labour on 7th September 2018 but the termination of members has escalated.

6. The union prays for confirmation of the injunctive relief and other substantive orders sought in the suit.

7. The respondent filed a response to the memorandum of claim on 4th March 2019 in which it states that the respondent was established and became operational on 5th January 2018. Respondent on this basis denies recruitment of 86% of its unionisable employees by the union.

8. That the check-off forms are invalid as they bear names of employees who were not in the employ of the respondent. Respondent states that it has always employed twice the number of employees alleged by the union to be 66 and that it employs more than 170 employees.

9. The respondent denies having harassed, intimidated or terminated unlawfully members of the union.

10. The respondent states therefore that the claimant has not met the simple majority threshold in terms of *Section 54 of Labour Relations Act, 2007* to warrant Recognition. In any event many of the employees have recalled their membership to the union. Wherefore, the respondent prays the suit be dismissed with costs.

11. The respondent produced witness statement of Tobias Odhiambo Kabita and list of documents as per the consent by the parties to proceed by way of written submissions. Both parties filed submissions.

Determination

12. The issues for determination are:

(a) Whether the respondent is obliged to deduct and remit union dues from members of the union.

(b) Whether the claimant union has met the threshold for recognition in terms of *Section 54(1) of Labour Relations Act*.

(c) Whether the interim injunction be confirmed to restrain the respondent from further harassment, intimidation and victimization of union members.

13. In dealing with issues (a) and (b) together the court notes that *Section 48(3) of Labour Relations Act 2007* mandates an employer who has been served with check-off forms to commence deducting union dues and remitting to the union forthwith. An employer has no choice in the matter. This is regardless of whether recognition has been granted or not.

14. In the present case, the respondent clearly violated *Section 48(3) of the Labour Relations Act 2007* by refusing to commence deducting and remitting union dues to date.

15. The court finds that instead the respondent engaged in subverting the efficacy and potency of the union by coercing its employees to quit the union. It has been shown that many of the employees who have recently joined the union were dismissed from employment and others forced to write withdrawal letters failing which they would be dismissed. The respondent is guilty of unfair labour practices in violation of *Article 41 of the constitution*. The respondent also violated *Section 5 of the Labour Relations Act 2007* and *37 of the constitution* by denying its employees the right to join union of their choice.

16. From the documentary evidence before court, it is clear that the union had recruited 53 employees as its members between December 2016 and 20th June 2017. The check-off forms duly signed and served were placed before court.

17. The claimant has satisfied the court that as at the time, the unionisable employees of the respondent were 66. The respondent has not provided any documentary evidence to support its bare allegation that it had more than 170 employees at the time. A simple register of employees would have sufficed but none was produced.

18. The court finds that the union had satisfied the requirements of *Section 54(1) of Labour Relations Act, 2007* by recruiting more than a simple majority of the unionisable employees of the respondent as at the time of filing suit.

19. Accordingly, the court finds that the respondent is obliged not only to deduct union dues in respect of all members of the claimant union and remit the same to the designated union account, the respondent is also obliged to sign Recognition Agreement with the claimant union forthwith.

20. The court takes a dim view of the sustained harassment, intimidation and victimization of union members employed by the respondent. The court issues a permanent injunction against the respondent to desist from these unfair labour practices that have been proved by the claimant union on a balance of probabilities.

21. In the final analysis and in answer to all the three issues for determination in this matter, judgment is entered in favour of the claimant against the respondent and the court makes an order:

(a) Directing the respondent to commence deducting union dues from all the employees named in the check-off forms before court who are still its employees and remit the same to the designated union account forthwith.

(b) Directing the respondent to sign Recognition Agreement with the claimant union within 30 days of the judgment.

(c) Injuncting the respondent from continuing intimidating, harassing and victimizing its employees for the reason only that they have joined the claimant union.

(d) Respondent to pay costs of the suit.

Judgment Dated, Signed and delivered this 17th day of October, 2019

Mathews N. Nduma

Judge

Appearances

M/S Koech for the claimant union.

Mr. Njoga for Respondent

Chrispo – Court Clerk