



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 368 OF 2018

(Before Hon. Justice Mathews N. Nduma)

BAKERY CONFECTIONERY FOOD

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

VERSUS

UNITED MILLERS UNITED.....RESPONDENT

JUDGMENT

1. The claimant union seeks declaratory orders that:

(a) Respondent's refusal to grant access to the claimant to conduct union activities within the respondent's enterprise is in violation of *Section 55 and 56(1) (b) of the Labour Relations Act, 2007 and Articles 36 and 41 of the constitution of Kenya 2010.*

(b) An order of permanent injunction restraining the respondent from denying the claimant periodic access to its premises for purposes of conducting legitimate trade union activities as contemplated by law.

Facts by claimant union.

2. That the union has a Recognition Agreement and Collective Bargaining Agreement with the respondent.

3. The dispute arises from failure by the parties to agree on a date and venue for purposes of conducting elections for the works committee initially proposed by the claimant to take place on 6th April 2018. The respondent wrote to the claimant on 19th March 2018 seeking to discuss modalities for conducting the said meeting as proposed by the claimant and for postponement of the meeting date.

4. Claimant agreed to the proposal by respondent vide a letter dated 28th March 2018. That the parties not only failed to agree on the date to discuss the modalities but have to date not been granted the date to access the enterprise to conduct the elections in violation of *Section 55 of the Labour Relations Act, 2007.* The claimant therefore prays for the reliefs sought.

5. In its memorandum of Response filed on 6th March 2019, the respondent admit the existence of Recognition Agreement and CBA between the parties.

6. Respondent states that the only disagreement was on the date and time the union wished to access the enterprise for its activities. That meetings needed to be arranged at a time and in a manner that is not disruptive to the operations of the company.

7. That on 3rd November 2018, the claimant's union conducted their elections in the respondent's premises. That the respondent has not and does not intend to deny the union lawful access on reasonable terms. That access need be reasonable and is not absolute. That the elections having taken place on 3rd November 2018 as evidenced by the letter dated 5th November 2018, this suit is spent and the same be dismissed with costs.

Determination

8. Disputes arising from the provisions of Labour Relations Act, 2007 ought to be reported to the Ministry of Labour for purposes of

conciliation, investigation or arbitration. *Rule 5(3)* of this court prohibit filing of suits such as this without an accompanying affidavit sworn by the claimant attesting to the reasons why conciliation did not take place.

9. The above notwithstanding, the claimant has the onus in terms of *Section 107 and 108 of the Evidence Act, Cap 80 laws of Kenya* to prove its case on a balance of probabilities.

10. Section 56 provides for reasonable access as follows:

“ 56(1)a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employers premises for officials or authorized representatives of the trade union to pursue lawful activities of the trade union.

56(2) an employer may:

(a) Impose reasonable conditions as to the time and place of any rights granted in this section to avoid undue disruption of operations or in the interest of safety”

11. The claimant union has failed to prove on a balance of probabilities that the respondent has violated *Sections 55 and 56 of Labour Relations Act*.

12. Indeed union elections were held in the enterprise on 3rd November 2018. This is evidence of reasonable access granted to the claimant union to conduct its lawful activities in the respondent’s premises. Furthermore, the respondent ought to have reported a dispute first in terms of the Recognition Agreement and *Section 57 of the Labour Relations Act and/or provide reasons why this did not take place*.

13. Accordingly, the suit lacks merit and is dismissed with no order as to costs.

Judgment Dated, Signed and delivered this 4th day of November, 2019.

Mathews N. Nduma

Judge

Appearances

Mr. Amalemba for the claimant union.

Mr. Dickens Ouma for Respondent

Chrispo – Court Clerk