



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 265 OF 2016

BETWEEN

KENYA LONG DISTANCE TRUCK DRIVERS &

ALLIED WORKERS UNION.....CLAIMANT

VERSUS

DOCWIDE BUSINESS CENTRE (K) LTD.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ngoze & Ngonze Advocates for the Claimant

Munyao, Muthama & Kashindi Advocates for the Respondent

JUDGMENT

1. The Claimant Union filed a Statement of Claim on 30th March 2016. It seeks Judgment against the Respondent in the following terms:-

- a) An Order do issue, prohibiting the Respondent from harassing, intimidating and/or otherwise unlawfully dismissing/terminating the Employees named at paragraph 5 of the Statement of Claim.
- b) An order do issue, compelling the Respondent to execute a Recognition Agreement in respect of Employees named at paragraph 5 of the Statement of Claim.
- c) An order do issue, compelling the Respondent to avail tabulation and accounts in respect of dues remitted in relation to Employees named at paragraph 5 of the Statement of Claim.
- d) Costs and interest.

2. The Respondent filed its Statement of Response on 11th May 2016. Response in general, denies the averments made by the Claimant in the Statement of Claim.

3. Parties recorded a consent order on 21st June 2017, to have the Claim considered and determined on the strength of the record.
4. They filed Closing Submissions, which were highlighted by Parties' Advocates in Court on 13th November 2017.
5. The Claimant abandoned other prayers, and only pursues the prayer on Recognition Agreement.

The Court Finds:-

7. The remaining prayer on recognition has no merit.
8. The Claimant did not show what percentage of Unionisable Employees was represented by the Employees named at paragraph 5 of the Statement of Claim.
9. The check-off lists attached to the Claim are not signed by the Employees. They do not show Employees' personal details. They cannot be accepted by the Court as evidence of recruitment of the Employees as Members of the Claimant Union.
10. The named Employees served under 1 year contracts, which expired on 24th April 2016. There contracts were not renewed. Considering that recognition is sought based on particular Employees, whose contracts expired, and were not renewed, there is no substratum upon which recognition can be granted. Recognition under Section 54 of the Labour Relations Act is granted where a Trade Union has demonstrated it has recruited a simple majority of Unionisable Employees. The Claimant has not shown it has, or had, recruited a simple majority at any one time. There is no collective bargaining unit capable of being represented by the Claimant Union.

IT IS ORDERED:-

a) The Claim is rejected in its totality.

b) No order of the costs.

Dated and delivered at Mombasa this 23rd day of February 2018.

James Rika

Judge