



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1786 OF 2013**

*(Before Hon. Justice Mathews N. Nduma)*

**KENYA SCIENTIFIC RESEARCH INTERNATIONAL TECHNICAL AND  
INSTITUTIONS WORKERS UNION.....CLAIMANT**

**VERSUS**

**KENYA UNION HAIR AND**

**BEAUTY SALON WORKERS.....1<sup>ST</sup> RESPONDENT**

**SANA INDUSTRIES CO. LIMITED.....2<sup>ND</sup> RESPONDENT**

**J U D G M E N T**

1. The Claimant union brought this suit praying for cancellation of Recognition Agreement signed between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 26<sup>th</sup> February, 2013.
2. The Claimant pleads that the Agreement was a result of collusion between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to defeat the recruitment process, deduction of union dues and eventual recognition of the Claimant Union which has majority members amongst the unionisable employees of the 2<sup>nd</sup> Respondent.
3. That the 1<sup>st</sup> Respondent is not the right union for an employer involved in manufacturing since the 1<sup>st</sup> Respondent only represents workers in hair and beauty salons and not in manufacturing.
4. That there being rival unions, the court needs to determine which is the appropriate union for the 2<sup>nd</sup> Respondent workers.
5. That the fictitious recognition agreement is meant to defeat rights and fundamental freedoms under Article 36 & 41 of the constitution of Kenya 2010, of freedom of association and right to join union of choice.
6. The Claimant has attached to the claim check-off forms dated 30<sup>th</sup> January, 2013, 16<sup>th</sup> February, 2013, 7<sup>th</sup> February, 2013, 11<sup>th</sup> February, 2013 and 6<sup>th</sup> April, 2018 which demonstrate that hundreds of the unionisable employees of the 2<sup>nd</sup> Respondent are members of the Claimant and the 2<sup>nd</sup> Respondent is bound to recognize the Claimant and negotiate a Collective Agreement with the Claimant on behalf of all signed up union members.
7. That the court had issued access orders to the Claimant Union on 23<sup>rd</sup> January, 2013 but in blatant defiance of the order, the 2<sup>nd</sup> Respondent hurriedly signed a recognition agreement with the 1<sup>st</sup> Respondent to defeat the court order.
8. The Claimant prays that the 2<sup>nd</sup> Respondent be held in contempt of court in addition to annulling the recognition agreement.
9. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed memorandum of defence on 15<sup>th</sup> July, 2016 respectively.
10. It is the Respondent's common position that the 1<sup>st</sup> Respondent had recruited a simple majority of unionisable members at the employ of the 2<sup>nd</sup> Respondent in terms of section 54(1) of the Labour Relations Act, 2007. The check-off forms dated 22<sup>nd</sup> August 2013; 15<sup>th</sup> July 2013; 16<sup>th</sup> July 2013; 18<sup>th</sup> July 2013; 27<sup>th</sup> June 2013; 17<sup>th</sup> July 2013; 19<sup>th</sup> July 2013; 8<sup>th</sup> August 2013; 7<sup>th</sup> August 2013; 6<sup>th</sup> August 2013;

20<sup>th</sup> August 2013; 10<sup>th</sup> – 19<sup>th</sup> July 2013 inter alia demonstrate this fact.

11. Following the said recruitment, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents signed a Recognition Agreement and a Collective Bargaining Agreement dated 11<sup>th</sup> September, 2013 which was subsequently registered by the court in terms of the LRA.

12. That the Claimant has not made out any case that the said recognition and Collective Bargaining Agreement were irregularly concluded. In any event, the Claimant is a stranger to the two agreements and cannot be heard to want the same nullified without any basis known in labour relations and contract law.

13. That he who alleges must prove. The Claimant has failed in that endeavor and the suit be dismissed with costs.

### **Determination**

(i) Has the Claimant laid any basis for the nullification of the recognition agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents?

(ii) Is the Claimant entitled to the reliefs sought?

### **Issue i**

14. From the evidence before court, the 1<sup>st</sup> Respondent had recruited a simple majority of all unionisable employees of the 2<sup>nd</sup> Respondent and served the 2<sup>nd</sup> Respondent with gazette notice no. 16484 signed by the Minister of Labour requiring deduction and remission of union dues to a specific bank account.

15. The 1<sup>st</sup> Respondent had satisfied section 54(1) of Collective Bargaining Agreement which provides –

*“An employer, including an employer in the Public Sector, shall recognize a trade union for purposes of collective bargaining if that union represents the simple majority of unionisable employees.”*

16. The Claimant Union has not adduced any evidence to show that the 1<sup>st</sup> Respondent had not recruited a simple majority. To the Country, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have successfully rebutted the bare allegations by the Claimant Union by producing check-off list of hundreds of unionisable employees of the 2<sup>nd</sup> Respondent who had become its members.

17. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have satisfied the threshold under section 54(1) as was stated by Ndolo J in Kenya & Leather Workers Union vs Crown Industries Cause No. 1746 of 2016 in which she found that documentary check-off lists were sufficient to demonstrate recruitment of unionisable employees.

18. What is more, the court has recognized the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by registering a collective Agreement between the two. The said Agreement is still in place and no Appeal or application for review was brought by the Claimant Union against the said registration. The Collective Bargaining Agreement was registered as RCA No.232 of 2013 and was registered on 10<sup>th</sup> October, 2013. Objections by the Claimant Union against the registration were rejected by Maureen Onyango J.

19. This suit was filed after the said registration on 5<sup>th</sup> November, 2013. This suit is a disguised appeal before the same court on its decision to give a stamp of approval on the recognition agreement and the Collective Agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. This court is functus officio in that regard.

20. In the final analysis, the Claimant has failed to discharge the onus placed on it under sections 107 and 108 of the Evidence Act, Cap 80 of the Laws of Kenya. It has not proved its case on a balance of probabilities and its case stands to fail.

21. The suit is dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**Dated and Signed in Kisumu this 7th day of May, 2018**

**MATHEWS N. NDUMA**

**Judge**

**Delivered and signed in Nairobi this 30<sup>th</sup> day of May, 2018**

**MAUREEN ONYANGO**

**JUDGE**

**Appearances**

Martin Oduor for the Claimant Union

Mr. Nyabena for 1<sup>st</sup> interested party

Mr. Masese for Respondent

Anne Njung'e – Court Clerk