



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 615 OF 2014

KENYA SHOE AND LEATHER WORKERS UNION.....CLAIMANT

VERSUS

MODERN SOAP FACTORY.....RESPONDENT

RULING

Introduction

1. This ruling flows from a preliminary objection raised by the Respondent by way of notice dated 17th November 2017 and filed in court on 19th December 2017. The objection is based on the following grounds:

a) That the Claimant and the alleged employees are strangers and have no *locus standi* to bring this claim against the Respondent as the Grievants' membership with the Union is disputed;

b) That the Claimant lacks *locus standi* to lodge the Memorandum of Claim as it offends the express provisions of Section 54 of the Labour Relations Act.

2. In its response to the Preliminary Objection dated 18th January 2018 and filed in court on 19th January 2018, the Claimant maintains that it has *locus standi* to bring this claim as the Grievants were its members.

3. This objection is premised on the uncontested fact that there is no Recognition Agreement between the parties. Section 54(1) of the Labour Relations Act expressly provides that recognition of a trade union is for purposes of collective bargaining.

4. In the written submissions filed on behalf of the Respondent on 2nd February, reference was made to the decision in *Communication Workers Union v Safaricom Limited [2014] eKLR* where Mbaru J stated the following:

“Without recognition by an employer, a trade union, even where registered as such, becomes a by-stander waiting by the roadside for instructions. Similar to a lawyer, though having a first class honours certificate of practice as an advocate of the High Court of Kenya. Such a lawyer though well versed in law and well suited to give legal advice to various citizens lacks capacity to stand in Court as an advocate representing a Client.”

5. With much respect to my sister Judge, I hold a different view on this matter. To my mind, a trade union has many roles and although collective bargaining which is premised on recognition is a premiere one, the other roles such as association generally and representation in particular, are equally important. What is clear is that Section 54(1) of the Labour Relations Act creates no necessary nexus between recognition and representation.

6. In *Transport and Allied Workers Union v DHL Global Forwarding (K) Limited (Cause No 745 of 2010)* this Court held the following:

“The Labour Relations Act and Industrial Court (Procedure) Rules confer a special jurisdiction on Trade Unions in industrial litigation where a Trade Union may sue in its own name on behalf of its members who are aggrieved by the action of their employer.

While recognition allows Trade Unions to negotiate a Collective Bargaining Agreement, it is not a prerequisite to union representation. The right to representation is conferred by membership which itself is a right under Article 41 of the Constitution of Kenya, 2010.”

7. In *Kenya Shoe & Leather Workers Union v Falcon Tanners Ltd (Cause No 826 of 2012)* Rika J rendered himself as follows:

“There is no legal obscurity on the right of representation of the Employees by the Trade Union. The law.....extends the right of representation of the Employees in Court, to the Trade Union, acting through its authorized Officers.”

8. It seems to me that the Respondent’s objection is based on a misapprehension of representation as a distinct right conferred by law on trade union members. To say that the right to representation must be preceded by recognition of the member’s trade union is to lock out a whole body of employees who belong to minority trade unions, to say nothing about the ensuing onslaught on fair competition among trade unions.

9. For the foregoing reasons, I find the objection by the Respondent not well taken and proceed to overrule it with costs in the cause.

10. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 31ST DAY OF JULY 2018

LINNET NDOLO

JUDGE

Appearance:

Mr. Maina (Union Representative) for the Claimant

Mr. Ondego for the Respondent