



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 2038 OF 2014

KENYA UNION OF COMMERCIAL FOOD

AND ALLIED WORKERS.....CLAIMANT

VERSUS

NAIROBI BOTTLERS LIMITED.....RESPONDENT

JUDGEMENT

1. This dispute is over what the claimant union alleges to be refusal by the respondent to deduct union dues from some 37 employees who allegedly exercised their right to join and participate in the activities of the union. According to the claimant on 27th – 30th August, 2013 twenty five unionisable employees exercised their right to join and participate in the activities of the union and registered their membership. Further, on 28th November - 4th December, twelve more employees signed check off forms expressing their intention to join the union.

2. The respondent on its part declined to effect the deductions stating that the employees who registered their membership with the union had their roles fully covered in management. The respondent further contended that the parties had agreed on the level of union representation by providing various job classifications in appendix IV of the CBA. According to the respondent, the grievants were mechanical technicians, electrical technicians and technical operators whose roles are not in grade 1-5. The respondent further submitted that the claimant was bound by the job grades and classification in the CBA. The inclusion of other job categories into the CBA must be done by mutual consent since the parties had previously agreed to exclude them from the CBA.

3. Union membership is a right provided for under the constitution. However, just like any other right except those listed under article 25 of the constitution, the right to join a union can subject to parameters set out under article 24 of the constitution be limited. The CBA for 2012/2014 at Appendix IV lists the cadres of respondent's employees covered by the CBA hence unionisable. This list does not include the cadre of employees the claimant intended to be included. To do so would require an amendment of the CBA in accordance with clause 24 of the CBA. Under clause 23 of the CBA the parties agreed on the principle of consultation in all matters arising or pertaining to the CBA.

4. Where parties negotiate and reduce their agreement in writing, the court becomes reluctant to interfere unless for the usual reason which would vitiate a contract. The court cannot order the expansion of the regime of the CBA. It has to be mutually agreed between the parties. If the claimant wants the 37 included as unionisable employees the matter should be subject to negotiations as provided for in the CBA. As pointed out, the cadre of employees sought to be included by the claimant are not among those listed under appendix IV and this was done by mutual consent of the parties.

5. The court therefore finds the claim without merit and dismisses the same with costs.

6. It is so ordered.

Dated at Nairobi this 13th day of July, 2018

Abuodha J. N.

Judge

Delivered this 13th day of July, 2018

Abuodha J. N.

Judge

In the presence of :

.....Claimant

..... Respondent