



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1469 OF 2013

KENYA ENGINEERING WORKERS' UNION.....CLAIMANT

VERSUS

NIRMAC FABRICATORS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The claimant is a Trade union that represents unionisable employees in the Engineering Sector. She recruited members from the respondent's workforce in February 2011 by signing check off forms authorizing deduction and remittance of union subscription from their salaries. Upon forwarding the said check-off forms to the respondent on 7.7.2011, the respondent declined to honour the same and barred the union entry to her premises.
2. As a result of the said matters, the claimant lodged a dispute with the Minister for labour on 8.8.2011 but the respondent declined to attend the conciliation and the dispute was referred to this Court on 10.9.2013. The claimant contended that she had recruited 100% of the respondents unionisable staff and prayed for an order to compel the respondent to sign Recognition Agreement with her.
3. Despite Service of summons and the claim documents, the respondent never filed any defence to the suit. The suit came up for hearing on 14.6.2018 when the claimant sought and obtained directions to dispense with oral evidence and asked the court to determine the suit on the strength of the record.
4. After careful consideration of the uncontested pleadings and the evidence in the form of check off forms and correspondences filed as exhibits, the issues for determination are:
 - (a) Whether the claimant had recruited a simple majority of the respondents unionisable staff before bringing this suit.
 - (b) Whether recognition should be granted as prayed.

Simple Majority

5. The claimant alleged in that she had recruited 100% of the respondent's unionisable staff. However, the court finds that from the documents produced as exhibits, one cannot tell how the alleged 100% recruitment was assessed. The pleadings and annexed documents have shown glaring gaps and contradictions. The main gap is that the total number of the unionisable employees was never pleaded. As a result, it impossible to tell whether indeed the alleged recruited members was equal to a simple majority as required by section 54 of the Labour Relations Act (LRA).
6. On the other hand, pleadings and the documents contain material contradictions in relation to the exact number of the members recruited. In paragraph 1 of the claim, it is alleged that 10 members were recruited which number is repeated in the letter dated 7.7.2011 which forwarded the check off forms to

the respondent. However the check of form contained a total of 14 members. Again in paragraph 5 of the claims, it is submitted that 100% of the unionsiable employees had been recruited. Considering the said gaps and contradictions, I find and hold that the claimant has failed to prove on a balance of probability that she recruited a simple majority of the respondent's total unionsable staff.

Reliefs

7. In view of the foregoing finding, I decline to grant the order for recognition as prayed.

Conclusion and Disposition

8. For the reasons that the claimant has not met the threshold for ordering recognition of a Trade union, I dismiss the suit with no order for costs.

Dated, Signed and Delivered in Open Court at Nairobi this 17th day of August, 2018

ONESMUS N. MAKAU

JUDGE