



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1643 OF 2013**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA UNION OF COMMERCIAL, FOOD AND  
ALLIED WORKERS.....CLAIMANT**

VERSUS

**SANPAC AFRICA LIMITED.....RESPONDENT**

**RULING**

The twin issues for determination before me are whether the claimant, the Kenya union of Commercial Food and Allied Workers Union has *locus standi* to file the present suit and whether there is a valid recognition agreement between the claimant union and the respondent.

**Background**

The claimant union filed the present suit alleging unlawful redundancy of 65 employees. In the respondent's memorandum of response to the claim, the respondent avers that there is no valid recognition agreement between the claimant and the respondent as the same was terminated by letter dated 5<sup>th</sup> November 2012. The respondent therefore argues that the claimant has no *locus standi* to file this suit.

Parties agreed to dispose of the issues of locus standi and validity of recognition agreement by way of written submissions.

**Claimant's Submissions**

The claimant submitted that the parties signed a recognition agreement on

26<sup>th</sup> September 1994. Pursuant thereto parties negotiated several collective bargaining agreements, the last of which covered the period 1<sup>st</sup> January 2009 to 31<sup>st</sup> December 2010. During negotiations for the subsequent collective agreement for the period 1<sup>st</sup> January 2011 to 31<sup>st</sup> December 2012 there was a disagreement between the claimant's Athi River Branch Secretary and the respondent. The respondent insisted on a written apology from the Branch Secretary and further demanded that the Branch Secretary be removed from the negotiating team of the claimant union, which the claimant did not agree with leading to a stalemate.

According to the claimant, the respondent persuaded three shop stewards who thereafter purported to have withdrawn from the union's membership. The claimant further avers that the shop stewards together with the respondent's compliance Manager, Mr. Peter Anyanzwa were used by the respondent to force the employees to sign a sheet of paper which was later used by the respondent to purport that the employees had withdrawn from the membership of the union. The respondent thereafter stopped deduction of union dues, wrote a letter dated 5<sup>th</sup> November 2012 to the union purporting to terminate recognition agreement with immediate effect and thereafter refused to engage in negotiations.

The claimant filed Cause No. 722 of 2012, which was decided on 13<sup>th</sup> May 2015 with the court ordering the respondent to negotiate with the claimant and conclude negotiations within 60 days. The claimant submits that the respondent filed an application for review which was still pending at the time of filing the present suit.

It is further the claimant's submission that on 29<sup>th</sup> November 2012 and 21<sup>st</sup> November 2017, the respondent wrote to the National Labour Board seeking the termination of the recognition agreement. The National Labour Board replied on 14<sup>th</sup> January 2018 advising the respondent to exhaust internal mechanisms before invoking Section 54(5) of the Labour Relations Act.

It is the claimant union's submission that the recognition agreement was not terminated by the National Labour Board and is therefore still intact. It is further the claimant union's submission that the sheet of paper with typed names of employees purported to have resigned is not a proper resignation, as it does not have a title indicating it is a list of resignation from union membership. The claimant submits that withdrawals from union membership cannot be collective.

The claimant further submits that it did not require a recognition agreement to file the claim, which is on redundancy.

### **Respondent's Submissions**

For the respondent it is submitted that 65 employees of the respondent resigned from the union as reflected in the letters of resignation, that this happened in October 2012, that the respondent wrote to the National Labour Board on 29<sup>th</sup> November 2012 and again on 21<sup>st</sup> November 2017 and the National Labour Board advised the respondent to exhaust available mechanisms.

It is the respondent's submissions that it has met all requirements of termination of recognition agreement, that simple majority is the key issue, that the National Labour Board did not take into account what transpired between 2012 and 2018, that the Labour Relations Act provides that a party not satisfied with the decision of the National Labour Board is supposed to refer the matter to conciliation or to the court, that it is evident that parties cannot resolve the matter and it is for the court to give a determination on the issue.

The respondent prays that the court allows it to terminate the recognition agreement.

### **Determination**

The issue whether or not a recognition agreement has been terminated is a matter of fact. It is a fact that the respondent wrote to the National Labour Board on 29<sup>th</sup> November 2012 requesting for the termination of the recognition agreement and did not get a response. The respondent again wrote on 21<sup>st</sup> November 2017 and got an answer on 14<sup>th</sup> January 2018 advising the respondent to exhaust the internal machinery.

It is further a fact that since then the respondent has not taken any steps to exhaust the internal machinery as advised by the National Labour Board or to appeal against the decision of the National Labour Board.

The recognition agreement itself provides for modification or termination thereof. The respondent has not complied with the termination clause of the recognition agreement.

The issue whether or not there was resignation of members is one for consideration when determining the issue whether or not the recognition agreement is to be terminated.

From the foregoing it is evident that there has never been a termination of the recognition agreement between the claimant and the respondent with the result that the claimant has locus standi to bring the present suit.

### **Conclusion**

I find that the recognition agreement between the claimant and the respondent is still valid as it has never been terminated and therefore the present suit is properly filed by the claimant union as it has *locus standi* to bring the suit.

I further find that the recognition agreement only gives the union right to negotiate the collective bargaining agreement while the right of representation is derived from membership of trade unions. The issue whether or not there is a valid recognition agreement is therefore not relevant for purposes of the suit before the court.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 17<sup>TH</sup> DAY OF AUGUST 2018**

**MAUREEN ONYANGO**

**JUDGE**