



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1345 OF 2014

(Before Hon. Justice Mathews N. Nduma)

BAKERY CONFECTIONERY, FOOD

MANUFACTURING & ALLIED WORKERS UNION.....CLAIMANT

VERSUS

JOY SUPER BAKERS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant seeks to be recognized by the Respondent as the sole union representing unionsable employees of the Respondent. The claim is opposed on the grounds that the Respondent has not satisfied the requirements of section 54(1) of the Labour Relations Act, 2007 by recruiting a simple majority of all unionsable employees of the Respondent.
2. The Claimant also seeks the court to compel deduction and remission of union dues to the Claimant Union.
3. The Claimant relied on the case of **Kenya Game Hunting & Safari workers Union Vs. Micatio Safaris [2013] eKLR** per Nduma J and Industrial Court of Kenya at Nairobi Cause No. 469 (N) of 2009 per Paul K. Kosgei J. to press for recognition and deduction of union dues stating that it has satisfied all the statutory requirements and was the correct union for the sector in terms of its constitution.
4. The Ministry of Labour made order No. 7170 requiring the Respondent to effect the check-off system for the union dues. A letter dated 2nd July, 2013 to the Respondent by General Secretary of the Claimant Union was produced before court. The notice has forty nine (49) employees, who have duly signed the check-off form.
5. The draft Recognition Agreement is also attached to the Memorandum of Claim.
6. The Respondent failed to sign the Recognition Agreement and to effect the check-off. A report of dispute was made to the Minister of Labour on 16th July, 2017. Conciliator Mr. P. N. Macharia was appointed on 1st August, 2017. A further dispute of lock-out of the five (5) employees was reported to the Minister.
7. The conciliator recommended that the Respondent accord formal recognition to the Claimant union.
8. The Claimant pleaded that it had recruited 49 out of the sixty employees of the Respondent. That these constitute more than the simple majority. The Claimant pleaded further that it relied on order No. 7170 made by the Minister as proof of the recruitment. The check-off produced bears the list of 49 employees recruited by the Respondent.

Memorandum of Defence

9. In its Memorandum of Defence the Respondent disputes that the Claimant had recruited 49 out of 60 of its employees. The Respondent lists twenty (20) employees in the Memo of defence, whom it states are not its employees.
10. A further list of 24 employees are named in the statement of defence and said to have withdrawn from the membership of the union.
11. The Respondent avers that it participated in the conciliation process through its lawyers. That the Claimant has not fulfilled requirements of section 54 of the Labour Relations Act. That the suit be dismissed with costs.

Determination

12. The court is satisfied that as at the time the Claimant sought deduction of union dues in terms of the notice by the Minister No.7170 it had recruited 49 out of 60 employees of the Respondent.

13. The Minister had in terms of section 49(1) issued a lawful order to the Respondent to commence deduction of union dues. The employer is mandated to implement the Minister's decision and commence deduction of union dues forthwith. The Respondent did not contest the order by the Minister pursuant to section 50(1) of the RLA.

14. In terms of the evidence before court, the Claimant has proved on a balance of probabilities that having recruited 49 out of 60 employees of the Respondents, the Respondent was obligated to formally recognize the union in terms of section 54(1).

15. The Respondent failed to rebut the credible documentary evidence presented by the Claimant.

16. The recommendation by the Labour officer who conciliated the dispute affirms this finding by the court.

17. In the final analysis, the court makes the following orders in favour of the Claimant union as against the Respondent:-

(i) The Respondent is to deduct union dues and remit to the union in respect of all members of the union in its employ in terms of the Minister's order no. 7170 forthwith.

(ii) The Respondent is to sign Recognition Agreement with the Claimant Union forthwith.

(iii) Respondent to pay costs of the suit.

Dated and Signed in Kisumu this 20th day of July, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 10th day of August, 2018

Maureen Onyango

Judge

Appearances

Amalemba for Claimant Union

Mungai Kalande & Co. for Respondent

Anne Njung'e – Court Clerk