



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2103 OF 2016

(Before Hon. Justice Mathews N. Nduma)

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

STEEL STRUCTURES LIMITED.....RESPONDENT

RULING

1. This suit was filed vide a Memorandum of Claim dated 3rd October, 2016 on 12th October, 2016.

2. The main prayers sought in the suit are as follows:-

(i) The court do find that the Claimant has met all requirements of the law to be accorded recognition by the Respondent.

(ii) That the Respondent be ordered to comply with section 48 of the Labour Relations Act 2007 by way of deducting union dues and remitting the same to the Claimant in the Gazetted account.

(iii) Costs of the Suit.

3. The Application filed simultaneously with the Claim seeking interim reliefs was partly granted.

4. The Kenya Building Construction, Timber & Furniture Industry Employees Union, a rival Union to the Claimant in the Industry and at the Respondent enterprise applied and has joined as an interested party to the suit.

5. The two rival unions are competing as to who is the right union to represent the employees of the Respondent. The interested party claims that it has represented these employees for over thirty years and has concluded many Collective Bargaining Agreements with the Respondent including the current one.

6. The Claimant on the other hand alleges that it has since recruited 317 employees of the Respondent out of 400 employees which constitutes over 51% (a simple majority). It therefore wishes that the existing Recognition Agreement between the Respondent and interested party be cancelled and the Respondent be directed to sign a new Recognition Agreement with the Claimant.

7. The Claimant subsequently filed an application on 19th April, 2016 which was subsequently withdrawn. The Claimant again filed the

application dated 15th October, 2016 which is due for determination.

8. The plethora of applications filed, seeking in the main similar reliefs has unduly delayed the hearing and determination of the Recognition dispute between the parties.

9. In terms of section 54(6) of the Labour Relations Act-

“54(6) If there is a dispute as to the right of a trade union to be recognized for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of part viii.

(7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the industrial court under a certificate of urgency.”

10. It should be understood by the parties that, the legislature intended the main suit in a recognition dispute be heard and determined as a matter of urgency and on priority basis. There is therefore no need to file a plethora of applications on a certificate of urgency dealing with same or similar prayers to those sought in the main suit.

11. The tendency by parties to file these many applications defeats the statutory purpose to hear and determine the main suit on an urgent basis.

12. The disputes of facts in this matter as is always the case in recognition disputes cannot be fully resolved without addressing the main suit.

13. The Respondent and the interested party are directed to file memorandum of response to the memorandum of claim within 21 days of this Ruling.

14. The parties are to thereafter take directions from the principal judge on filing of final submissions on the main suit. **For the avoidance of doubt, this is a Nairobi matter and should be determined in Nairobi. The same is not partly heard and ought not to be referred to me in Kisumu.**

15. This application and any other interlocutory application pending are dispensed with. The status quo at the Respondents employ with regard to recognition; deduction of union dues and Collective Bargaining Agreement be observed until this suit is determined on a priority basis.

16. Accordingly, all the pending interlocutory applications are dispensed with and the matter proceed to trial as directed above. Costs in the cause.

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

Mr. Araka for Claimant

Mr. Njenga for Respondent

M/s. Chege for interested party

Anne Njung'e – Court Clerk