



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 59 OF 2013

KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS.....CLAIMANTS

VERSUS

AMUS MOTORS.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant union brought this suit on 18.1.2013 alleging that she recruited 9 out of 10 unionizable employees of the respondent but the respondent refused to sign a Recognition Agreement in her favour. She therefore prayed for an order to compel the respondent to accord her recognition with immediate effect. She also prayed for costs of the suit.
2. The respondent filed her defence on 5.6.2013 contending that all her employees who had been recruited as union members by the Claimant had voluntarily withdrawn their membership and paid no union dues through the employer. She therefore averred that the Claimant does not represent 90% of the unionizable staff and prayed for the suit to be dismissed for lack of merits as the Claimant is not entitled to the recognition sought.
3. The suit came up for hearing on 25.9.2018 but the parties agreed to dispense with the hearing and instead dispose of the suit by written submissions on the basis of the pleadings and supporting documentary evidence filed.

Claimant's Case

4. The Claimant submitted that on 9.3.2011, she recruited as members all the 10 unionizable employees of the respondent equalling to 100% representation. She further submitted that despite the 100% representation the respondent refused to sign Recognition Agreement and thereby obstructing her members their constitutional right to join and be represented by a trade union of their choice.
5. She denied the alleged withdrawal of membership as pleaded in the defence and averred that the said members swore affidavits on 27.6.2013 contending that they were forced to sign affidavits for withdrawing from the union before being paid their salary for May 2013. She further submitted that the dispute was conciliated but it was not resolved. She therefore prayed for an order to compel the respondent to sign Recognition Agreement within 14 days after the date of judgment. She further prayed for another order compelling the respondent to pay her union dues for the 10 members at the rate Kshs.400 from March 2011 to date. She also prayed for costs

Defence Case

6. The respondent never filed written submission and as such, she relied on her pleadings and the documentary evidence on record. She relied on a bundle of letters by the recruited members by which they voluntarily withdrew their membership on diverse dates in July 2011. She also relied on the letter dated 7.2.2013 signed by 7 of the recruited members requesting the Claimant to withdraw this suit from court. She also relied on a bundle of affidavits sworn by 6 of the recruited members confirming their intention to withdraw from the Claimant union and also confirming their intention to have this suit withdrawn.

Analysis and Determination

7. After careful consideration of the material presented to the court, I find no dispute in fact that the respondent had employed 10 unionizable staff as at March 2011. There is further no dispute that the Claimant recruited all the said staff as union members and requested for recognition by the respondent but the latter refused. There is further no dispute that the recruited members wrote letters in July 2011 withdrawing their union membership. There is further no dispute that the dispute was reported to the Labour Ministry for conciliation but it

was not resolved. The issues for determination are:

- a) Whether the Claimant had met the threshold for recognition as at the time she filed this suit.
- b) Whether the reliefs sought should be granted.

Threshold for Recognition

8. Section 54(1) of the Labour Relations Act provides that:

“An employer including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents a simple majority of unionisable employees.”

9. The foregoing provision is couched in mandatory terms and once the thresholds of simple majority representation is proved, the employer has no option but to accord the union recognition. In this case there is no dispute that as at March 2011, the Claimant had recruited 100% of the respondents 10 unionisable staff. However in July the same year 9 of the union members wrote letters to the Claimant withdrawing their union membership. The Claimant has not denied receipt of the said resignation letters.

10. Under section 48 (7) of the Labour Relations Act the said resignation from the union took effect after one month from the date of the resignation letters. The said section provides:

“(7) A notice of resignation referred to in subsection

(6) takes effect from the month following the month in which it is given.”

11. It follows therefore that the said 9 union members ceased to be members of the Claimant union effective from August 2011. In view of the said withdrawal of membership it is obvious that the Claimant was left with only one employee out of 10 to represent. It has not been shown that the Claimant recruited the said 9 members afresh after their withdrawal took effect in August 2011.

12. It follows that as at 18.1.2013 when this suit was filed, the Claimant was representing only 10% of respondents 10 unionisable staff. Consequently I return that the Claimant has not proved on a balance of probability that she fulfilled the legal requirement of having a simple majority representation of the respondent’s unionisable staff as at the time of filing this suit.

Reliefs

13. Flowing from the foregoing finding, I find that the suit has no merits and the reliefs sought are declined. However she is free to try again to recruit new or the same members afresh.

Conclusions and disposition

14. I have found that the Claimant did not represent a simple majority of the respondent’s unionisable staff as at 18.1.2013 when she filed this suit. Consequently the suit is dismissed with no order as to costs.

Dated, Signed and Delivered in Open Court at Nairobi this 14th day of December, 2018

ONESMUS N. MAKAU

JUDGE