

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 62 OF 2017

KENYA UNION OF COMMERCIAL

FOOD & ALLIED WORKERS (KUCFAW).....CLAIMANT

VERSUS

HOME AFRICA LIMITED.....RESPONDENT

JUDGMENT

1. The matter before me is the issue of recognition. The Claimant had recruited 70% of the unionisable employees of the Respondent. The Claimant union asserts that it recruited 50 out of 70 unionisable employees of the Respondent which is above the 51% provided for in Section 54(1) of the Labour Relations Act. The Claimant therefore sought recognition as it asserts it has recruited the simple majority of employees in terms of Section 54 of the Labour Relations Act. The Claimant submits that the refusal to recognise the union is a violation of the ILO Conventions, the Labour Relations Act and the Constitution of Kenya 2010. The Respondent on its part asserts that the Claimant has not recruited a simple majority and that it has only recruited 50 out of the 127 unionisable employees and therefore did not meet the threshold in Section 54(1). It further submits that the Claimant's numbers were depleted further when withdrawals from membership and disavowal of union membership is factored in. The Respondent asserts that there can be no recognition granted the lack of numbers. Under the Labour Relations Act, the law provides as follows on recognition:

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

(3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.

.....

(6) If there is a dispute as to the right of a trade union to be recognised 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. (underline mine)

2. From the foregoing, in order to obtain recognition a union has to undertake certain steps and upon satisfying the threshold would be entitled to recognition. Having failed to agree on the matter the same was referred to conciliation. The Conciliator appointed put up his arms in surrender on 30th January 2017 stating that he had been unable to resolve the matter and proposing that parties invoke the provisions of Section 69 and refer the matter to this court. The dispute in essence is about numbers. The Claimant asserts it has reached the requisite threshold while the Respondent asserts the Claimant does not have the numbers. Having looked at the evidence adduced, the Respondent is right. The Claimant union has some numbers no doubt but the number of employees whose union dues were being deducted did not meet the threshold for recognition as they are less than 50% of the unionisable employees. From the dues indicated to have been sent to the Claimant as contained in Appendix 12 of the Claimant, the number is 29 which is a far cry from the 70% the Claimant asserts that it has. This was after the 27 members withdrew. In my view, the Claimant as at the time the dispute was presented to Court did not have the requisite numbers and therefore not entitled to recognition. The suit is therefore dismissed but each party is to bear their own costs.

It is so ordered.

Dated and delivered at Nyeri this 6th day of December 2018

Nzioki wa Makau

JUDGE