



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA
AT KISUMU
CAUSE. NO. 59 OF 2013
(FORMERLY NAIROBI CAUSE NO.1234 OF 2012)
(BEFORE HON. LADY JUSTICE MAUREEN ONYANGO)

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT

-VERSUS-

RILEY FALCON SECURITYRESPONDENT

JUDGMENT

The Claimant is a trade Union registered under the Labour Relations Act to represent Labour and employment interests of employees engaged in Private Security Industry while the Respondent is a Limited Liability Company carrying on business of provision of private security services with offices in Kisumu.

By a Memorandum of Claim dated 20th July, 2012 the Claimant alleges that the Respondent has refused to recognise the claimant union and further that the Respondent has refused to deduct union dues from its employees who are members of the claimant union and to remit the same to the union's registered account.

The union states that on diverse dates it recruited members from amongst the employees of the Respondent who signified their joining of union membership by entering their names in the check-off forms and signing against their names. The Claimant states that it recruited a majority of the Respondent's employees into its membership following which it forwarded the check off forms to the Respondent to effect deduction of union dues. The Claimant further states that having met all the legal prerequisites for recognition by the Respondent, it wrote several letters to the Respondent seeking a meeting for signing the Recognition agreement to no avail. This prompted the union to report a trade dispute to the Minister. The Minister appointed Mr. J. Omweno as conciliator. The conciliator called several meetings which the Claimant attended but the Respondent did not attend, thus frustrating the conciliation process. The conciliator issued a certificate of disagreement on 30th September, 2010 paving the way for the filing of the instant dispute in court.

The Claimant urges the court to order the Respondent to deduct and remit union dues to its registered/designated account and order it to recognise the union.

The Respondent on its part avers that it was never informed about the recruitment of its employees into the membership of the Claimant union. The Respondent submitted that it took a census of its employees

based on the list provided in the Memorandum of claim and confirmed that among those alleged to have been recruited, 7 did not provide their personal file numbers making it difficult for the Respondent to verify if indeed they are its employees, taking into account that the recruitment was way back in 2009. The Respondent further submitted that in the year 2009 it had a workforce of more than 2000 and the number recruited accounts for only 4.75% of its employees. The Respondent further submitted that out of the list in the Claimant's check-off forms, 33 employees left employment in 2009, 4 in 2010, 24 in 2011 and 11 in 2012.

The Respondent further submitted that the gazette notice No.10615 that is annexed to the claimant's submissions is dated 29th July, 2012 and could not have been the basis for deduction of union dues in 2009 when the claimant alleges to have qualified for recognition by the Respondent.

The Respondent further submitted that it was not aware about the report of a dispute by the Claimant and was not aware about appointment of a conciliator. The Respondent stated that the only evidence of the reporting of the dispute is the letter from the Ministry of Labour dated 10th September, 2010 and another one of 30th September, 2010 followed by a certificate of disagreement. It submitted that there is no evidence that the Respondent was ever invited for any conciliation meeting which it failed to attend.

The Claimant further submitted that it is a member of Kenya Security Industry Association which signed a recognition Agreement with the Kenya National Private Security Workers Union, the Claimant herein, on 10th June 2016 and this dispute which seeks recognition has now been rendered redundant.

It prayed that the dispute herein be dismissed with costs.

Determination

I have carefully considered the written submissions filed by the parties and in my opinion the issues for determination are the following -

1. Whether the Claimant Union qualifies for recognition by the Respondent.
2. Whether the Respondent has refused to deduct and remit union dues to the Claimant.

The right of employees and employers to associate is enshrined in Article 36 and 41 of the constitution which provide as follows -

Freedom of association.

36. (1) *Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.*

(2) *A person shall not be compelled to join an association of any kind.*

(3) *Any legislation that requires registration of an association of any kind shall provide that—*

(a) *registration may not be withheld or withdrawn unreasonably; and*

(b) *there shall be a right to have a fair hearing before a registration is cancelled.*

Labour relations.

41. (1) *Every person has the right to fair labour practices.*

(2) *Every worker has the right—*

(a) *to fair remuneration;*

(b) to reasonable working conditions;

(c) to form, join or participate in the activities and programmes of a trade union; and

(d) to go on strike.

(3) Every employer has the right—

(e) to form and join an employers organisation; and

(f) to participate in the activities and programmes of an employers organisation.

(4) Every trade union and every employers' organisation has the right—

(a) to determine its own administration, programmes and activities;

(b) to organise; and

(c) to form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

The operational requirements are provided under section 48 and 54 of the Labour Relations Act. Section 48 provides for collection of union dues through check-off by employers while section 54 provides for compulsory recognition of a trade union by an employer, group of employers or employers association once the union has recruited a simple majority of employees of the employer, group of employers or the employer's association.

In the present case, the claimant attached check-off forms alleged to have been served upon the Respondent. The check-off forms relate to recruitment of members from among employees of the Respondent between April and June 2009. The Respondent denied ever receiving the check-off forms.

There is no evidence in the Memorandum of Claim that the check-off forms were ever served upon the Respondent. The Claimant did not file any rejoinder to the submissions of the Respondent to contest its averments that it was never served with check off forms.

In the circumstances I am inclined to believe that the Claimant did not serve the check-off forms upon the Respondent.

On the second issue on refusal to recognise the union, the Respondent has submitted that the employees whose names appear in the check-off forms appended to the Memorandum of Claim constitute only 4.75% of its workforce as at 2009. This fact has not been contested. The court notes that the claimant has not produced any evidence that it ever sought recognition from the Respondent. There is no letter from the Claimant addressed to the Respondent making any reference to recognition agreement. It is surprising that the Claimant filed a dispute accusing the Respondent of refusing to recognise the union but with no evidence that it ever sent any request to the Respondent for recognition. It is also telling that the Claimant has not stated in the Memorandum of Claim what percentage of the Respondent's employees it had recruited into its membership.

For the foregoing reasons, I find that the Claimant has not proved that it ever qualified for recognition by the Respondent by recruiting a simple majority of the Respondents employees.

The foregoing notwithstanding, the claimant union has now been recognised by the Kenya Security Industry Association. The Respondent is a member of the Association and is therefore covered by the recognition agreement. The issue of recognition has thus been overtaken by events, while the claimant

now has opportunity to recruit employees of the Respondent and submit check-off forms for purposes of deduction and remittance of union dues.

For these reasons, I find that the Claimant has not proved its case against the Respondent and dismiss the same with no orders for costs.

Dated and signed and delivered this 16th day of February, 2017

MAUREEN ONYANGO

JUDGE