



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 773 OF 2016
KENYA UNION OF COMMERCIAL FOOD
AND ALLIED WORKERSCLAIMANT
VERSUS
LEMOC LIMITED.....RESPONDENT

RULING

1. By motion dated 4th May, 2016 the claimant seeks among others that the respondent be ordered by the court to commence deduction and remittance of union dues pending the hearing and determination of the main suit. The claimant further seeks an order of injunction restraining the respondent from victimizing, intimidating, coercing or disciplining the claimants who appear in the check off forms pending the hearing and determination of the main suit.
2. The application was based on the main grounds that on various dates between 2012 and 2014 the claimant recruited 90 out of 175 unionisable employees of the respondent which was over and above 51% simple majority as required under section 54(1) of the Labour Relations Act. Despite the recruitment, the claimant complained that the respondent denied it recognition as required by Labour Relations Act.
3. The respondent on its part contended that the claimant never recruited 90 members from among the respondent's employees. According to the respondent it carried out a verification exercise to confirm its employee's membership to the claimant union before any due could be deducted but the said employees denied membership to the claimant union. The respondent further stated that the confidential employee information including payroll numbers were obtained fraudulently.
4. In the face of such discrepancy the respondent could not make any deductions from its employee's salaries. The respondent further contended that since the employees whose names appeared on the check off forms denied joining the union, the claimant did not meet the requisite 51% threshold entitling it to recognition.
5. Regarding the conciliation process, the respondent contended that the purported report of the dispute to the Minister and appointment of a conciliator was never brought to its attention as required by section 62(2) 191 of Labour Relations Act. According to the respondent therefore, the application is premature as the steps for conciliation provided for under section 62 of the Labour Relations Act have not been adhered to.

6. The respondent has raised serious procedural and legal questions which the court cannot ignore. It would seem that the respondent has no serious objection to according the claimant recognition. All the respondent seems to say is that such recognition must follow the procedure set out in the Labour Relations Act. That is to say, the claimant must recruit a simple majority of the respondents' unionisable workers and should there be any dispute over recognizing the same an attempt be made to resolve it in accordance with procedure set out in the Labour Relations Act prior to referral to the court.

7. This court has as one of its core jurisdictions as conferred by article 159 of the Constitution to encourage alternative dispute resolution mechanisms. As was held by my brother Justice Nderi Nduma in the case of **Kenya Concrete Structural Ceramic Tile, Wood Ply and Interior Design Employees –Vs- Kenya Building Construction, Timber, Furniture & Allied Industries Employees Union** all disputes brought under the Labour Relations Act must follow the dispute resolution mechanism prior to being filed in court. The court will therefore not insist and no party should persist that the court hears a dispute where it has been reasonably established that pre-court dispute resolution mechanism has not been tried or exhausted.

8. The court in the circumstances will order that the dispute be referred to the Cabinet Secretary, Ministry of Labour Human Resource Development to appoint a conciliator to attempt resolving the same.

9. The suit therefore stands stayed until such conciliation is attempted and outcome communicated to the court by either party.

It is so ordered.

Dated at Nairobi this 10th day of February 2017

ABUODHA JORUM NELSON

JUDGE

Delivered this 10th day of February 2017

ABUODHA JORUM NELSON

JUDGE