



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1520 OF 2014**

**BAKERY CONFECTIONERY FOOD MANUFACTURING ALLIED WORKER UNION (K)  
.....CLAIMANT**

**VERSUS**

**BETA BAKERS CO. LIMITED .....  
....RESPONDENT**

Amalemba for claimant

Mr. Mbotany for respondent

**JUDGMENT**

1. The dispute before court is “*refusal by the respondent company to sign a Recognition Agreement with the Union*”
2. The claimant filed a memorandum of claim on 2<sup>nd</sup> September 2014, in which it alleges the following:
  - *That on 11<sup>th</sup> November 2013 and the 21<sup>st</sup> January 2014 respectively, the claimant union recruited 128 employees out of unionsable employee of the respondent.*
  - *That this represented a simple majority of the unionsable employees in satisfaction of Section 54(1) of the Labour Relations Act, 2007.*
  - *That the claimant union submitted check-off forms to the respondent pursuant to Order No. 7170 of 2013 made by the Ministry for Labour and Manpower Development authoring deductions of union dues from the employees who had joined the union and remit the same to the Gazetted account.*
  - *The claimant further forwarded a standard Recognition Agreement on 19/11/2013 to the respondent which was duly received and acknowledged for signature in recognition of the union.*
  - *That on 27/11/2013, a joint meeting was held between the claimant union and the respondent on this subject but no agreement was reached.*
  - *That the respondent have dillydallied on the matter and have refused, and or neglected to deduct the money due and recognise the union.*
3. A dispute was reported to the Ministry of Labour on 20<sup>th</sup> January 2014 in terms of Section 62 of Labour Relations Act. Mr J. W Makaa was appointed conciliator on 18/2/2014.
4. Upon considering memoranda from the parties on 17/7/2014, the conciliator made a recommendation which the union and its respondent were unable to agree on its implementation hence the matter came to

court.

5. The claimant seeks

(a) Declaratory order directing the respondent to execute the recognition agreement with the union within 14 days and

(b) A declaratory order directing the respondent to collect and remit union dues backdated from the date the employees joined the union

6. The claimant union relies on the Minister's Order No. 7170 attached together with the check-off forms attached thereto indicating the number of employees that it had recruited. The draft Recognition Agreement is also attached to the statement of claim.

### **Response**

7. In its response and written submissions, the respondent deny that the union had attained a simple majority as provided under Section 54 (1) of Labour Relations Act 2007. The respondent state that upon discussing the matter of recruitment with the employees in the check-off forms, 90% of them stated that they had not authorised the deductions and that their signatures were appended on the check-off forms.

8. That they claimed their signature were forged by the union supervisor Mr Christopher Kiiio.

9. The respondent purports to have issued in good faith fresh forms to the employees for signature with a view to forward the same to the union.

10. That some employees wrote names of their colleagues without their consent and that the actual workers who had joined the union were less than a simple majority.

11. The conciliator had in his report found that 109 employees out of 233 had joined the union which represented 46% of unionsable employees. The conciliator recommended that the union continue to recruit more members to satisfy 50+1% of unionsable employees of the respondent to ensure recognition.

### **Issues for Determination**

(i) Whether or not the respondent was obliged to collect and remit union dues.

(ii) Whether or not the respondent was obliged to recognise the union

### **Issue I**

12. The parties agreed to proceed by way of written submissions and so no oral evidence was adduced before court.

13. The court relies on the narrative in the pleadings, documentary evidence and the submissions before court.

14. Section 48(2) provides

**(2) A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to –**

**(a) deduct trade union dues from the wages of its members; and**

**(b) pay monies so deducted –**

**(i) into a specified account of the trade union; or**

**(ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.**

**(3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.**

15. It is clear from this provision that once the Minister issues an order directing an employer of more than five (5) employees belonging to the union to deduct trade union dues from their wage, the employer is obliged without question to commence deducting such union dues from the employees' wages within thirty (30) days of receiving the notice by the union.

16. The employer may only revert to the Minister to vary the order if it has any reservations on any matter arising from it.

17. The court is satisfied that the union fully complied with the requirements placed on it under Section 48 of Labour Relations Acts of 2007. The court is equally satisfied that the Minister issued a lawful order in terms of Section 48, which order was served on the respondent by the union to commence deducting union dues in respect of 128 employees.

18. It is evident that this order of the Minister was not properly challenged, was not reviewed and same is in place.

19. The respondent is obliged to commence deducting with immediate effect union dues backdated from the date the employees joined the union and the court so finds.

## **Issue II**

20. Regarding the issue of recognition. The union has presented a lawful Notice by the Minister under Order 7170 of 2013 made pursuant to Section 48 of Labour Relations Act of 2007. The number of employees in the presented check-off forms amount to 128.

21. The respondent has offered vague opposition to this figure and did not tender any credible oral or documentary evidence to show that the employees named in the check-off and their signatures are not genuine.

22. The purported action by the respondent to repudiate the check-off list and prepare fresh check-off list and submitted the same to the employees is inconsistent with its lawful mandate in implementation of freedom of association provisions in the LRA, 2007 and Article 41 of the constitution of Kenya 2010.

23. The action by the respondent amounts to intimidation of union members and the same is unlawful. The respondent has no role whatsoever in preparation and submission of check-off forms. All it has to do is to implement collection of union dues and remit the same to the designated accounts.

24. The respondent's proper role, therefore is to ascertain that the recruited employees represent 50+1% of its unionsable employees and if the threshold has been achieved, proceed to engage the union to discussions that would culminate in the preparation and signing of Recognition Agreement.

25. The respondent had no business to engage its employees in questioning the authenticity of their signatures and membership unless any of the individual employees voluntarily wrote protesting his or her membership of the union which is not the case here.

26. Upon considering the totality of evidence before court, the court is satisfied that as at the date the

union presented the check-off list to the respondent, the union had recruited 128 of 180 unionsable employees of the respondent and the union had therefore attained the simple majority threshold required of it under Section 54 (1) of LRA and the court finds so.

27. The court makes the following final orders;

(a) The court directs the respondent to execute a formal recognition agreement with the claimant union within 30 days from date of this judgment.

(b) The court directs the respondent to collect and remit all the union dues in respect of all its employees named in the check-off forms before court backdated from the month when the said employees joined the claimant union

(c) Respondent to pay costs of the suit.

**Dated and delivered at Nairobi this 3<sup>rd</sup> day of February 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**