



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 1746 OF 2016**

**KENYA SHOE AND LEATHER WORKERS UNION.....CLAIMANT**

**VERSUS**

**CROWN INDUSTRIES LIMITED.....RESPONDENT**

**AND**

**KENYA CHEMICAL AND ALLIED WORKERS UNION.....INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. On 7<sup>th</sup> September 2016, the Claimant filed a Memorandum of Claim together with a Notice of Motion against the Respondent. The Respondent filed a response and a replying affidavit on 7<sup>th</sup> September 2016. The Interested Party was joined in the proceedings by consent on 8<sup>th</sup> September 2016. The Claimant filed a further affidavit on 22<sup>nd</sup> September 2016 and the Respondent filed a supplementary affidavit 23<sup>rd</sup> September 2016. The Interested Party filed a replying affidavit on 26<sup>th</sup> September 2016

2. When the parties appeared before me on 27<sup>th</sup> September 2016 they agreed to dispense with both the claim and the application by way of written submissions.

**The Claimant's Case**

3. The Claimant states that between 2012 and 2013, the Respondent's employees joined its membership. The Claimant forwarded the check off forms plus a model recognition agreement to the Respondent who however declined to deduct union dues for remittance to the Claimant. The Respondent also declined to sign a Recognition Agreement with the Claimant.

4. The Claimant reported a trade dispute to the Cabinet Secretary for Labour who appointed a conciliator. The parties failed to agree at the conciliation stage and the Claimant filed Cause No 1372 of 2013. A ruling was delivered by **Marete J** on 4<sup>th</sup> March 2014 directing the parties to agree on the issues in dispute.

5. The Claimant Union avers that the Respondent has transferred its production machines and the Claimant's members to an unnamed company without union involvement.

6. The Claimant further states that since February 2016, the Respondent has deducted and remitted union dues to it but the dues have been declining from month to month.

7. The Claimant now seeks the following reliefs;

a) That the Respondent be restrained from transferring its production machines and the Claimant's members without involving the Claimant

Union;

b) That the Respondent be directed to sign a Recognition Agreement with the Claimant.

### **The Respondent's Response**

8. In its response dated 6<sup>th</sup> September 2016 and filed in Court on 7<sup>th</sup> September 2016, the Respondent states that pursuant to court orders issued in Cause No 1372 of 2013 it has fully cooperated with the Claimant.

9. The Respondent pleads that the Claimant's membership has not reached the threshold for recognition and that a rival union, Kenya Chemical and Allied Workers Union has recruited the requisite numbers for recognition. The Respondent has therefore signed a Recognition Agreement with the latter union.

10. The Respondent further states that it has lawfully engaged in the process of re-organising its business through re-deployment, redundancy and translocation of its business enterprises.

11. In a replying affidavit sworn by the Respondent's Director, Chetan Sangharajka on 6<sup>th</sup> September 2016 he deposes that following the ruling by the Court in Cause No 1372 of 2013, the parties convened several meetings whose objective was to determine the identity and number of the Respondent's employees who are members of the Claimant Union.

12. Sangharajka states that the Claimant has not demonstrated that it has recruited a simple majority of the Respondent's employees as its members so as to be entitled to a Recognition Agreement.

13. The Director further deposes that the parties had agreed that the Respondent could carry out redundancy within the ambit of the law. The Respondent admits that it is reorganising its business, including transferring some divisions to Thika Town. Relevant notices and correspondence were issued to the Union and the affected employees.

14. In a supplementary affidavit sworn on 22<sup>nd</sup> September 2016, Sangharajka adds that as part of the business reorganisation it had acquired premises off Nanyuki Road in Industrial Area being L.R. No. 209/8728.

15. On 19<sup>th</sup> June 2016, the Respondent invited all its employees, including those to be relocated to the new premises, together with their families for an opening ceremony. The employees were therefore fully aware of the reorganization and those who were relocated moved willingly and continued to discharge their normal duties from the new premises.

16. Regarding its obligations to the Claimant, the Respondent states that it had effected a check-off system in favour of the Claimant on account of those employees who had confirmed their membership with the Claimant. There was however a rival union, the Kenya Chemical and Allied Workers Union which had recruited the Respondent's employees as its members.

17. The Kenya Chemical and Allied Workers Union had forwarded a list of its members to the Respondent on 6<sup>th</sup> July 2016 and had demanded recognition. Being satisfied that this Union had achieved the threshold for recognition, the Respondent signed a Recognition Agreement with it. It was therefore not possible to sign a second Recognition Agreement with the Claimant.

### **The Interested Party's Response**

18. The Interested Party's response is contained in a replying affidavit sworn by its National General Secretary, Were Dibo Ogutu. He deposes that the Interested Party has a valid Recognition Agreement with the Respondent.

19. Ogutu states that the Claimant has no valid claim before the Court.

### **Findings and Determination**

20. There are two issues for determination in this case:

- a) Whether the transfer of the Respondent's production machines and the Claimant's members raises a recognisable cause of action;
- b) Whether the Claimant has attained the threshold for recognition by the Respondent.

### **The Transfer**

21. The Claimant contends that the Respondent has transferred its members to an unknown location. While denying the Claimant's averments, the Respondent admits having relocated some of its employees to new premises. The Respondent maintains that the relocation, of which all employees were duly notified, is part of its business reorganization program.

22. Apart from general statements by the Claimant, no specific violation of employee rights was pleaded. The Court therefore found no fault with the Respondent's decision to reorganize its business operations and consequently declines the invitation by the Claimant to interfere.

### **Recognition**

23. The law on recognition of trade unions is found in Section 54(1) of the Labour Relations Act which provides as follows:

***(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.***

24. The Court was referred to the decision in ***Aviation & Allied Workers Union v Air Kenya Express Limited & another [2013] eKLR*** where the aforesaid provision was affirmed. Attainment of a simple majority for purposes of recognition is a matter of evidence and a trade union may lose an accrued recognition if its numbers drop below the simple majority threshold (see

***Scientific Research International Technical & Allied Workers Union v Kenya Agricultural Research Institute & another [2013] eKLR.***

25. It follows therefore that a trade union pursuing recognition must lay before the Court documentary evidence that it has recruited a simple majority of the unionisable employees in the employment of the employer from which it seeks recognition.

26. Logically, there can only be one recognition agreement in a single establishment at a time. At the time of writing this ruling, there was a Recognition Agreement between the Respondent and the Interested Party executed on 6<sup>th</sup> July 2016. On its part, the Claimant submitted copies of check off forms signed between 2015 and 2016. What is significant is that out of a total of 221 members, 218 are shown as having signed the check off forms before execution of the recognition agreement between the Respondent and the Interested Party.

27. It seems to me that since the Claimant effectively seeks to dislodge the Interested Party from the recognition privilege, it ought to have filed evidence of its current membership status. Having failed to do

so and there being no invalidating reasons against the recognition agreement already in force, the Court finds the claim for recognition unsupported and unsustainable.

**Disposition**

28. Overall, the Court finds the Claimant's entire claim to be without basis and proceeds to dismiss both the claim and the Notice of Motion dated 29<sup>th</sup> August 2016.

29. Each party will bear its own costs.

30. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 1<sup>ST</sup> DAY OF FEBRUARY 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Maina (Union Representative) for the Claimant Mr. Juma for the Respondent

Mr. Gwako (Union Representative) for the Interested Party