



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 33 OF 2016

KENYA CHEMICAL & ALLIED

WORKERS UNION

CLAIMANT

v

RUBY M.W.F. & FLOUR MILLS LTD

RESPONDENT

JUDGMENT

1. The Kenya Chemical & Allied Workers Union (Union) commenced legal proceedings against Ruby M.W.F. & Flour Mills Ltd (Respondent) on 4 February 2016 and the issue in dispute was stated as *Terms and Conditions of Employment*.
2. The Respondent filed a Memorandum in Reply and Counterclaim on 19 September 2016 and the Union filed a Response to the Memorandum of Reply and Reply to Counter Claim on 7 October 2016.
3. Pursuant to a Court order, the Central Planning & Monitoring Unit filed a report on 19 January 2017.
4. On 26 January 2017, the parties proposed and the Court agreed to have the dispute determined on the basis of the record and submissions to be filed.
5. The Union filed its submissions on 9 February 2017 while the Respondent filed its submissions on 28 February 2017.
6. From the record and submissions, 2 key issues fall for the determination of the Court and these are, *whether the recognition agreement in place should be declared null and void and/or whether the Court should assess the 3 outstanding items regarding a collective bargaining agreement*.

Declaration recognition agreement null and void

7. The Union and the Respondent entered into a recognition agreement on 24 June 2013 after a Court decree issued on 24 July 2013 (dates appear inconsistent).
8. On 24 September 2015, the Respondent wrote to the National Labour Board seeking for the revocation of the recognition agreement on two grounds, that the Union's membership had fallen to 2 from 9, and that it did not use any chemicals in its processes.
9. The Respondent contends that the National Labour Board did not respond to its request.

10. Section 54(5) of the Labour Relations Act provides for the termination of a recognition agreement and the authority mandated to terminate or revoke such an agreement in the first instance is the National Labour Board.

11. Although the Respondent has asserted that it made a formal request to the National Labour Board, it has not demonstrated that the request was delivered to the National Labour Board.

12. The copy of request to the National Labour Board has a stamp from the County Labour Office, Nakuru dated 25 September 2015 and no indication whether it was delivered to the Board.

13. The County Labour Office is a separate entity from the National Labour Board and without any suggestion that it serves as agent of the Board, the Court is of the view that it would be premature for it to address this question without the organ legally mandated to determine validity and/or revocation of a recognition agreement.

14. The National Labour Board should be allowed to carry its legal mandate before invoking the Court's jurisdiction as there must have been a policy reason why the mandate was given to it in the first instance.

Contested items in collective bargaining agreement

15. After the parties entered into a recognition agreement, the Union wrote to the Respondent on 9 September 2013 forwarding proposals towards reaching a collective bargaining agreement.

16. The Respondent gave its counter proposals through a letter dated 6 February 2014.

17. After the exchange of the proposals, the parties *Joint Negotiating Committee* met on 12 February 2014 under the facilitation of the Federation of Kenya Employers.

18. Another meeting was held on 19 March 2014 but because the parties failed to agree on 3 items (*general wage increase, leave travelling allowance and effective date and duration of the collective agreement*), the Union reported a trade dispute to the Cabinet Secretary on 10 June 2015.

19. On 1 September 2015, the Respondent forwarded a memoranda to the Conciliator appointed by the Cabinet Secretary in which it offered a 1% wage increment, leave travelling allowance of Kshs 900/- and proposed the collective agreement be effective from date of signing (improved proposals were made during preparation of report by Central Planning & Monitoring Unit).

20. Seeing no end in sight, the Union moved Court on 4 February 2016.

21. In terms of sections 69 and 73 of the Labour Relations Act, and the Industrial Court Procedure (Rules) 2010 since replaced by the Employment and Labour Relations Court (Rules) 2016 (effective August 2016), a party to an unresolved trade dispute which had been referred to conciliation should secure a certificate of unresolved dispute before moving Court or file an affidavit stating why no certificate has been issued when moving Court.

22. The Union did not exhibit any certificate of unresolved issue or depose an appropriate affidavit explaining the failure.

23. Equally, the Union did not demonstrate that its commencing Court action before resolution of the dispute was within the 30 days envisaged by section 67(1) and 69 of the Labour Relations Act.

Conclusion and Orders

24. In the circumstances, the Court will decline to assume jurisdiction over the 3 outstanding items and order that

(a) The Cause herein be struck out.

(b) Costs be in the Cause.

Delivered, dated and signed in Nakuru on this 24th day of March 2017.

Radido Stephen

Judge

Appearances

For Union Mr. Mueke, Assistant Secretary General, Kenya Chemical & Allied Workers Union

For Respondent Ms. Wachira, instructed by Wachira Wanjiru & Co. Advocates

Court Assistant Nixon