



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO.173 OF 2016**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS.....  
CLAIMANT**

**VERSUS**

**MAGUMANGO DAIRY CO-OPERATIVE SOCIETY LIMITED.....  
RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 19<sup>th</sup> May, 2017)

**JUDGMENT**

The claimant union filed the memorandum of claim on 15.08.2016 alleging failure by the respondent to sign a recognition agreement and to deduct and remit union dues. The claimant's case is that it has recruited 100% of the respondent's employees eligible to join the union and in accordance with section 54 of the Labour Relations Act, 2007. The section provides that an employer shall recognise a trade union if the union represents the simple majority of unionisable employees. The claimant's further case is that the respondent operates within the sector the claimant is registered to represent employees as per section 54(8) of the Act and there is no rival trade union or dispute as envisaged in section 54 (6) of the Act. The claimant prayed for judgment against the respondent for:

- a. A declaration that the claimant is the proper trade union to represent the interests of the respondent's unionisable employees.
- b. The respondent to deduct and remit union dues from all unionisable employees who have signed the claimant's check off forms.
- c. The respondent not to, victimize, intimidate, harass, coerce, dismiss or terminate any union members on account of their union activities.
- d. The claimant to engage the claimant in negotiation of the collective agreement within 30 days.
- e. The respondent to pay costs of the suit.

The respondent's case is that the respondent recruited the respondent's employees through deceit and untrue promises of increased income. The court observes that the particulars of deceit were not pleaded and the evidence of the alleged deceit has not been provided. It is further urged for the respondent that the employees have since issued instructions that they are not members of the union. The respondent has urged that the employees should not be forced to join the union.

The court has considered the material on record. It is not in dispute that the claimant achieved recruitment

of simple majority of the respondent's unionisable members. The court returns that the claimant satisfied section 54 (1) and (8) on recognition and is entitled to be so recognised. The court returns that it is immaterial that subsequent to such recruitment, some of the employees may have quit the union. The court holds that once the event of simple majority recruitment was attained, the respondent was obligated to recognise the claimant as per the provisions of section 54 of the Act.

The respondent filed the memorandum of response on 12.10.2016 through Kijaru, Njeru & Company Advocates. The respondent prayed for a declaration that the claimant's claims are unconstitutional, illegal, null and void *ab initio*; and the claim be dismissed with costs.

The respondent's case is that the workers have since resigned from the union membership. Section 48 (6) of the Labour Relations Act, 2007 is clear that an employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union and under section 48(7), such notice takes effect from the month following the month in which it is given. Under section 48(8) of the Act, the employer must forward to the trade union such notice of resignation by the employee from the trade union. The court holds that the statutory provisions are clear on when union dues may not be deducted and therefore not be remitted on account of the employee resigning from the union. However, the court further holds that such resignation by an employee from the union will not thereby impair the accrued entitlement of the union to be recognised as per section 54 of the Act.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- a. The declaration that the claimant is the proper trade union to represent the interests of the respondent's unionisable employees.
- b. The respondent to deduct and remit, effective end of May 2017, union dues from all unionisable employees who have signed the claimant's check off forms as duly recruited and who have not resigned from trade union membership as per section 48 of the Act.
- c. The declaration that the respondent shall not victimize, intimidate, harass, coerce, dismiss or terminate any employee being a trade union member on account of the employee's union activities or membership.
- d. The respondent to engage the claimant in negotiation of the collective agreement within 30 days from the date of this judgment.
- e. The respondent to pay costs of the suit.

**Signed, dated and delivered** in court at Nyeri this **Friday, 19<sup>th</sup> May, 2017.**

**BYRAM ONGAYA**

**JUDGE**