

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.16 OF 2017

KENYA UNION OF COMMERCIAL, FOOD AND

ALLIED WORKERS..... CLAIMANT

VERSUS

SHADE NET LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 19th May, 2017)

JUDGMENT

The claimant union filed the memorandum of claim on 19.01.2017 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 51% 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 membership.
- d) The claimant to engage the claimant in negotiation of the collective agreement within 60 days.
- e) The respondent to pay costs of the suit.

The respondent filed the memorandum of response on 14.03.2017 through AGN Advocates. The respondent prayed for the claimant's claims to be dismissed with costs.

The main issue for determination is whether the claimant has satisfied section 54 (1) and (8) on recognition so that it is entitled to be so recognised. The claimant alleges that it has recruited 51% of the respondent's unionisable employees. The claimant has filed some recruitment forms signed by the respondent's employees.

While alleging that 51% of the employees have been recruited, the claimant has not stated the numbers recruited as against the total number of eligible employees. The respondent has stated that it employees over 200 workers and those recruited are only 44. On a balance of probability and taking the material on record into account, the court returns that the claimant has failed to establish that it has recruited a simple majority of the eligible unionisable respondent's employees as per section 54(1) of the Act.

Second the respondent has urged and is not in dispute that it is engaged in manufacturing of plastics meant for instant sales through wholesale or retail outlets. Rule 5 of the claimant's constitution on membership lists sectors under which the membership is drawn including distributive and commerce sectors, bottling and brewing sectors, and laundry cleaners and dyers sectors. The respondent has stated that it is involved in manufacturing of drip irrigation and HDPE pipes. Taking the material on record into account, the court returns that the claimant has not established that its sector of representing workers covers the kind of manufacturing enterprise which the respondent undertakes. Thus, the claimant has failed to satisfy section 54 (8) on the sector of operation.

In conclusion, the claimant's suit is hereby dismissed with costs.

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

BYRAM ONGAYA

JUDGE