



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 462 OF 2016

BETWEEN

BAKERY, CONFECTIONERY, FOOD

MANUFACTURING & ALLIED WORKERS UNION.....CLAIMANT

VERSUS

MWANANCHI BAKERS & CONFECTIONERS LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Daniel Amalemba Advocate for the Claimant

Conrad Maloba & Associates, Advocates for the Respondent

JUDGMENT

1. The Claimant filed its Statement of Claim on the 16th June 2016. It seeks for 2 orders against the Respondent: that the Respondent executes Recognition Agreement with the Claimant, within 14 days of delivery of this Judgment; and the Respondent commences deduction and remittance of Trade Union Dues in accordance with the law.
2. The Claimant states it has recruited 57, out of a total unionisable labour force of 67 Employees, working for the Respondent. It has met the simple majority required under Section 54 of the Employment Act 2007. It forwarded a draft Recognition Agreement to the Respondent on 29th July 2015, and scheduled a meeting with the Respondent on 7th August 2015, intending to have Recognition Agreement executed. The Respondent did not attend the meeting or execute Recognition Agreement.
3. On 27th July 2015, the Claimant forwarded Check-Off Lists to the Respondent, requesting the Respondent to deduct and remit Trade Union Dues, in accordance with the names appearing of the Lists. The Respondent did not act on the Check- off Lists as requested.
4. The Claimant reported the existence of a dispute to the Cabinet Secretary for Labour, who appointed a Conciliator on 8th October 2015. The Respondent declined to attend conciliation meetings, forcing the Conciliator to issues a Certificate of Disagreement under Section 69 of the Labour Relations Act Number

14 of 2007, paving the way for filing of the Claim in Court.

5. The Respondent filed its Statement of Response on the 24th November 2016. It concedes to have received Recognition Agreement drafted by the Claimant, together with the Check-Off Lists. It required time to go through the documents. The Respondent has always been willing to participate in the process. The Respondent requested the Claimant to supply fresh Check-Off Lists, as the ones submitted had alterations. The Respondent has not refused to deduct and remit Trade Union Dues, but could not comply, as the submitted Lists had alterations. The Respondent would like to renegotiate with the Claimant, and prays the Court to decline Claimant's prayers, 'until this matter is resolved.' At the same time, the Claimant makes an outright prayer, that the Claim is dismissed with costs to the Respondent.

6. Parties agreed on 7th February 2017 to have the dispute considered and determined on strength of the record. They confirmed filing of their Submissions on 14th March 2017.

The Court Finds:-

7. The Claimant Union has recruited more than a simple majority of Respondent's Unionisable Employees, and satisfied Section 54 of the Labour Relations Act 2007.

8. Names of recruited Employees were forwarded to the Respondent by the Claimant. The Lists are part of the record. They are signed by the Employees. Employees voluntarily exercised their freedom of association as guaranteed under the Constitution of Kenya and the Labour Relations Act. The Respondent was presented with a Draft Recognition Agreement, and requested to deduct and remit Trade Union Dues with regard to Claimant's Members. This was not done. The Claimant reported the existence of a Trade Dispute to the Cabinet Secretary for Labour. A Conciliator was appointed. The Respondent declined to submit to the jurisdiction of the Conciliator, making this litigation necessary.

9. The Respondent has not taken this dispute seriously, before the Conciliator and before the Court. Its position is that Check-Off Lists had alterations and forgeries. No details of alterations and forgeries were pointed out to the Conciliator or the Court. The numbers recruited by the Claimant are not disputed. Assuming some names in the Lists were disputed, why would the Respondent not deduct and remit Trade Union Dues with regard to undisputed names?

10. In its Submissions filed on 29th March 2017, the Respondent makes irrelevant arguments about Sections 41, 43 and 45 of the Employment Act 2007. What does this dispute have to do with unfair termination? Unless the Court has missed out on some Pleadings filed the Parties, there is nothing at all, direct or indirect, about unfair termination. How does an Advocate submit on totally irrelevant provisions of the law, to a dispute relating to Trade Union Recognition? The Respondent's Advocate ought to have taken his brief with the seriousness it merited. The opening paragraph in the Respondent's Submissions states that before the Court is a Claim for unfair and unlawful termination. Where did the Respondent's Advocates get this from? The Submissions filed on behalf the Respondent are quite baffling.

11. The Court is satisfied the Claimant has met the requirements of the law on recognition of Trade Union and deduction of Trade Union Dues, under Section 54 and 48 of the Labour Relations Act respectively. The Court agrees that the Respondent should bear the costs of this litigation as submitted by the Claimant.

It is ordered:-

a. The Respondent shall within 30 days from the date of Judgment, execute Recognition Agreement with the Claimant Union.

b. The Respondent shall forthwith deduct and remit Trade Union Dues to the Claimant, with regard to Check-Off Lists already submitted by the Claimant, and/ or Check Off Lists submitted subsequent to 27th July 2015.

c. Costs to the Claimant.

Dated and delivered at Mombasa this 29th day of June 2017

James Rika

Judge