



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**JUDGEMENT 1386 OF 2016**  
**KENYA BUILDING CONSTRUCTION TIMBER AND**  
**FURNITURE INDUSTRIES EMPLOYEES UNION.....CLAIMANT**  
**VERSUS**  
**EKOTECH LIMITED.....RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim dated 28<sup>th</sup> August, 2013 the claimant averred that it was the rightful union to represent the unionisable employees of the respondent. It further averred that it recruited 17 employees of the respondent into its membership representing about 62% of the respondent's whole workforce. The claimant then sent signed check off forms to the respondent requiring the respondent to commence deductions of union dues from the said member's salary. The claimant further averred that it sent an invitation to the respondent with intent to commence negotiations leading to signing recognition agreement but the respondent declined both.
2. The claimant therefore reported the dispute to the Minister for conciliation and a conciliator was appointed. According to the claimant the respondent attended the conciliation meeting only once forcing the conciliator to record a statement and refer the matter to court for adjudication.
3. The respondent on its part averred that the claimant had not fulfilled the legal requirements for recognition and that any purported recruitment was inordinate, premature and illegal for lack of a recognition agreement. The respondent further averred that the purported recruitment of 17 employees of the respondent included 5 employees whose contracts had expired in December, 2012 and were no longer on the respondent's payroll.
4. According to the respondent therefore, the list of 17 employees provided by the claimant was incorrect and did not form the alleged 62% of the employees in the respondent's employment.
5. The respondent further averred that the claimant was not the right union to represent employees in the Industrial Waste Recycling Sector which the respondent was in.
6. Concerning conciliations, the respondent averred that it attended one conciliation meeting but asked for the second one to be rescheduled as it had visitors from overseas. The respondent thus contended that the suit was brought prematurely before exhaustion of procedures laid down in section 67 of the Labour Relations Act.

7. Section 54(1) of the Labour Relations Act provides in paraphrase that an employer shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

8. My understanding of this section is that recognition is mandatory once there is proof that the union concerned has attained the simple majority of unionisable employees in the employer's employment. The claimant averred that it recruited 17 of the respondent's employees which it regarded as constituting 62% of the respondent's workforce. The respondent on its part contended that it had a workforce of 25 employees, 5 of the 17 named in the claimant's list of members had their contracts expired in December, 2012. The respondent however, did not single out the said five employees.

9. The right to join a trade union is a constitutional right and the court must do everything within its power to protect that right. As said earlier recognition is not negotiable once the union concerned has sufficiently demonstrated that it has attained a simple majority of unionisable employees in a particular workforce. The claimant herein has attached with this claim check off forms containing names of 17 employees it claimed to have recruited. The respondent on its part averred that 5 out of the 17 had their contracts expired at the time of signing the check off forms. The respondent has however not singled out the said five employees implying they did not prove their allegations. The court therefore believes the claimants.

10. In the circumstances, the court hereby orders the respondent to recognize the claimant for purposes of collective bargaining as required by section 54 of the Labour Relations Act.

11. It is so ordered.

Dated at Nairobi this 14<sup>th</sup> day of July 2017

**Abuodha J. N.**

**Judge**

Delivered this 14<sup>th</sup> day of July 2017

**In the presence of:-**

..... for the Claimant

..... for the Respondent

**Abuodha J. N.**

**Judge**