



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 198 OF 2015**  
**BETWEEN**  
**KENYA SHOE LEATHER WORKERS UNION.....CLAIMANT**  
**VERSUS**  
**AFRICA PVC INDUSTRIES LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

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*Mr. Julius Maina, Industrial Relations Officer for the Claimant*

*Muturi Gakuo & Kibara Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant Union filed its Statement of Claim, on the 9<sup>th</sup> April 2015. It seeks Judgment against the Respondent, in the following terms:-

- a. The Respondent is ordered to deduct and remit trade union dues in accordance with Section 54 [2] and [3] of the Labour Relations Act 2007.
- b. The Respondent is ordered to sign Recognition Agreement with a view of negotiating a CBA.
- C. Costs of the Claim.

2. The Respondent filed its Statement of Response on 24<sup>th</sup> July 2015. Its position is that it has 16 Unionisable Employees. The Claimant has not recruited a simple majority of these. Some names listed in Check-Off Lists submitted by the Claimant to the Respondent, did not belong to Respondent's Employees. Others were names of Casual Labourers, who were not unionisable. Employees who were approached by the Claimant Union declined membership. The Respondent further states majority of its Employees withdrew membership. The Respondent prays the Claim is dismissed with costs to the

Respondent.

3. The dispute came up for hearing on 28<sup>th</sup> September 2015. The Respondent informed the Court it was willing to grant Claimant recognition, subject to verification of Employees' status with the Claimant Union. The Court stayed its proceedings and directed the County Labour Officer to verify the number of Employees of the Respondent who were Members of the Claimant Union.

4. The County Labour Office visited the Respondent factory, and found there were a total of 28 Unionisable Employees. Of these, 16 were confirmed to be members of the Claimant Union. This figure exceeded the simple majority required under the law, standing at 57%. The Report of the Labour Officer was filed in Court, on 27<sup>th</sup> October 2015.

5. When the Parties appeared before the Court on 30<sup>th</sup> October 2015, Counsel for the Respondent told the Court he did not know how the Labour Officer investigated, and reached his findings.

6. The County Labour Officer was called as a Witness of the Court and was questioned by both Parties on his Report. He confirmed his findings, explaining the process involved both the Employer and the Employees. The Respondent alleged there were Employees who wrote letters withdrawing Membership. The Court ordered these Employees summoned to explain their position with regard to their recruitment and withdrawal. 14 Employees were thus called, and gave evidence on 1<sup>st</sup> and 2<sup>nd</sup> December 2016.

7. 12 of the 14 affirmed their membership of the Union, explaining they were prevailed upon by their boss, Director Jagdish Gohil to write the letters of withdrawal. 2 disavowed the Union.

8. Jagdish gave evidence on 27<sup>th</sup> March 2017, as did his Warehouse Manager Lucas Miganda.

9. The Director's position is that his Company, the Respondent herein, has an existing Recognition Agreement with another Trade Union, the Tailors & Textiles Workers' Union. The Respondent deals with laminated tarpaulins. It does not deal with leather, the industry which the Claimant Union represents. The Respondent has not barred its Employees from joining the Union already in recognition with the Respondent. He testified he did not know who wrote the letters of withdrawal.

10. Miganda confessed he wrote the letters of withdrawal, upon the request of the Employees. The Employees had been misled by the Claimant Union that they would have their salaries raised, upon joining the Claimant Union. They changed their minds and instructed Miganda to write the letters of withdrawal. The Respondent does not bar its Employees from joining a Trade Union. Its sister Company, Mombasa Canvas Limited, has Employees who are members of Tailors & Textiles Workers' Union. Miganda testified he did not have any specific interest, in having Employees join Tailors & Textiles Workers' Union.

11. The matter was last mentioned in Court on 16<sup>th</sup> June 2017 when Parties confirmed the filing of their Closing Submissions.

**The Court Finds:-**

12. Section 54 [1] of the Labour Relations Act 2007 requires that a Trade Union has recruited a simple majority of Unionisable Employees, to be accorded recognition by an Employer.

13. Section 54 [8] of the same Act, requires that where a dispute on recognition is before the Court, the Court shall take into account the sector in which the Employer operates, and take into account also, the model recognition agreement.

14. There is considerable doubt in the mind of the Court whether, the Claimant Union recruited a simple majority of Respondent's Unionisable Employees; and secondly, whether the Claimant Union is the relevant Union to represent Respondent's Employees.

15. On the numbers, the Labour Officer established there were 28 Unionisable Employees, at the time he carried out the exercise. According to his report, 16 were confirmed as Members. Confirmation in some cases was through the phone. The Court does not understand why there was no physical count of all the Employees. The Labour Officer concluded the Claimant Union had recruited 57% of the total available. The Claimant on its part states it recruited 16 against the available labour force of 20 Unionisable Employees.

16. In Court however, only 12 out of 14 Employees presented before the Court, were able to confirm membership. Some also confirmed they had written letters withdrawing their membership, upon being coerced to do so by Gohil. Jeremiah Akumu avoided revisiting his letter of withdrawal altogether, alleging he was unable to read its contents because he left his reading eye glasses at home. Others such as George Mutuku testified they were not forced to sign the letter, but that they did not understand what they were signing. Others yet, such as Leonard Maghangha said they were compelled to sign, but by no-one in particular. This evidence was confusing. Even assuming they were coerced, and rightfully rejoined the Union after withdrawal, their number in total is not shown to constitute a simple majority. 12 out of the available number of 28, is below the legal threshold.

17. Specifically, the Claimant Union submitted the names of 16 Employees to the Respondent, through its Check-Off Lists. Out of the 16, 2, Ochieng' Vincent Limbe and Hamisi Menza told the Court they are not members of the Claimant Union. The numbers do not match those provided by the Labour Officer. There was a mismatch of the numbers given by the Labour Officer, with those given in Court by the Employees, and those contained in the Check-Off Lists, so much so, that the Court would not have ground to conclude a simple majority threshold has been achieved by the Claimant under Section 54 [1] of the Labour Relations Act 2007.

18. The second question is on the Claimant's suitability and relevance in representing Respondent's Employees. Even if it is concluded the Claimant Union has passed the simple majority test, is it the right Union to represent Respondent's Employees? Gohil explained his Company deals with PVC Laminated Tarpaulins, not leather. There was no answer to this from the Claimant Union, save to say that the Union alleged to be relevant to Respondent's industry, Tailors & Textiles Workers' Union, has not objected to Claimant's representation of Respondent's Employees.

19. The Respondent however did explain, that it has a sister Company, Mombasa Canvas Limited whose Employees are Members of the Tailors & Textiles Workers Union. The Claimant Union is in the leather industry, while the Respondent and its affiliates seem to lean in the territory represented by Tailors & Textiles Workers' Union. It was even suggested, though not supported by documents, that Tailors & Textiles Workers' Union has a Recognition Agreement and has concluded a CBA with the Respondent.

20. Whichever the case, there is a relationship between the Respondent's sister Company, the industry in which the Respondent operates, and the Tailors and Textiles Workers' Union. The Claimant is prevented under the principle of industrial trade unionism, from stretching its wings of representation to cover an area represented by another Union. It is not necessary that this other Union is present in Court, for the Court to arrive at this finding. The Court can assess the relevance of the Claimant Union in representing Respondent's industry, relying on the material and evidence before it. The Respondent has shown, it is not in the leather industry, and the Claimant Union is not the right Union to represent Respondent's Employees.

21. The Employees who joined the Claimant Union and who then wrote letters withdrawing membership, did not in any event, show that they were coerced by Gohil or any other Officer into resigning. As discussed above, a good number of these Employees gave very unreliable evidence on their membership of the Claimant Union. Those who resigned wrote nothing after resigning, indicating that they were coerced, and that, they now wished to rejoin their former Union. Their evidence in Court, weighed against that of Gohil, was unconvincing. Why would the Employer allow Employees to join another Union, while demanding Employees resign from the other Union?

22. Lastly, to introduce another Union in Respondent's business would mean the Respondent is

compelled to negotiate and bargain collectively with different Trade Unions, with respect to Employees similarly placed. The resultant terms and conditions of employment, at Mombasa Canvas Limited and the Respondent, would likely not be in harmony. This would not be in the interest of industrial peace and stability. ***There is no merit in this Claim. It is dismissed with no order on the costs.***

Dated and delivered at Mombasa this 15<sup>th</sup> day of September 2017.

James Rika

Judge