



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 268 OF 2014

TRANSPORT WORKERS UNION.....CLAIMANT

VS

TRANS-TRADE LTD (K).....RESPONDENT

JUDGMENT

Introduction

1. The claimant brought this suit against the respondent on 17.6. 2014 seeking:-
 - a. Recognition under section 54 of the Labour Relations Act (LRA) with back dated union dues.
 - b. Implementation of check off deductions in accordance with section 48 and 50 of Labour Relations Act.
 - c. Injunction to restrain the respondent from intimidating, harassing and threatening her employees.
 - d. An order directing the respondent to enter into Collective Bargaining Agreement (CBA).
2. The basis of the suit according to the claimant is that she has recruited as her members 80% of the respondent's unionisable staff and forwarded check off forms to the respondent to deduct and remit union dues from the said union member's salary. That she has also forwarded to the respondent a model Recognition Agreement to sign but respondent has refused both to sign the recognition Agreement and to implement the check off deduction of union dues. Instead, the claimant avers that the respondent has resorted to intimidating, harassing and threatening her recruited union members and forcing them to revoke their union membership or be dismissed.
3. The respondent has denied that the claimant has recruited 80% of her unionisable work force as union members to warrant recognition under section 54 of the Labour Relations Act. She avers that she has 40 employees and 17 out of the members recruited have since withdrawn their membership in writing in addition to those who have since left employment. She denies the alleged dismissal and harassment of her employees and avers that the said employees were dismissed on grounds of misconduct and not for their union affiliation.
4. On 17.12.2014, the parties agreed to conduct a head count to verify the union membership under

the watch of Mrs. Cicilia Ronga, Labour Officer Mombasa who later filed two conflicting reports, one dated 10.2.2015 and the other 10.3.2015. The first report showed that the claimant recruited 9 out of 34 employees while the second one showed that the claimant had recruited a total of 24 employees as union members. As a result of the said conflict, the parties agreed to proceed with the hearing. The suit was disposed of by written submissions.

Analysis and determination

5. There is no dispute that in between January 2013 and October 2013 the claimant recruited union members from staff of the respondent. There is also no dispute that some of the recruited members of the union withdrew from the union by writing to the respondent on 25.10.2015. The issues for determination are:-
 - a. Whether the claimant has met the threshold for the recognition sought.
 - b. Whether the respondent should implement the check off deductions.
 - c. Whether the respondent should be restrained from harassing, intimidating and threatening her employees on grounds of their union affiliation.
 - d. Whether the respondent should be directed to enter into a CBA with the claimant.

Threshold for Recognition

6. Under section 54 of the Labour Relation Act, a trade union must recruit a simple majority of the employer's unionisable workforce before it can be accorded recognition as the appropriate union in the industry to represent the said workers. In this case the notice of recruitment is contained in the check off form dated 3.6.2013 and 31.10.2013. The total number recruited is 26 as per the two check off forms. Two of the recruits, Mr. Chris Kyalo and Said Faraji have signed twice. That means the actual number of recruits were 24. The claimant never pleaded the total number of the respondent's unionisable work force upon which she had calculated the 80% recruitment. She did not dispute the respondent's pleadings that the total number of unionisable employees were 40. She also did not dispute the respondents averment in the defence that 17 out of the 24 recruited union members voluntarily withdraw their membership by letters dated 25.10.2013 which were produced by the defence.
7. After careful consideration of the all matters placed before this court, it emerges clearly that the claimant had not met the threshold for the order of recognition to be made. She recruited 24 out of 40 unionisable employees between 3.6.2013 and 31.10.2013 which was obviously more than a simple majority required under section 54 of the Labour Relations Act. However on 25.10.2013, 17 out of the 24 recruits withdrew from the union in writing. Under section 48 (6) of the Labour Relations Act, an employee is entitled to resign from a trade union by serving a written notice to the employer. The effect of the said resignation was to reduce the number of the union membership from 24 to 7 which was far below the simple majority required for any recognition to issue. The answer to the first issue for determination is therefore in the negative.

Implementation of check off deductions

8. There is no dispute that only 7 out of the 24 employees did not resign from the union after recruitment. However the claimant pleaded that some of the recruits were dismissed from employment on ground of union affiliation. On the other hand, the respondent admitted that she dismissed some employees not for the reason of their union membership but on ground of misconduct. The claimant gave an example of Ramadhan B. Kibwana, David M.A. Mkabana and Najib A. Ali as some of the dismissed employees. None of the two parties stated the exact number of the dismissed members of the union. The court has therefore no evidence upon which to make a finding as to what number of the employees remained as union members as at the time of filing the suit on 17.6.2014 and who still are members. Consequently, the order for implementation of the check off deductions is not capable of being made.

Injunction from harassment, intimidation and dismissal

9. No evidence was placed before the court to prove that the recruited members of the union were harassed, intimidated and or dismissed for their membership affiliation. None of the victims of the alleged harassment, intimidation or dismissal testified or filed any witness statements or affidavits. In addition to the findings above that there may be no union members still existing in the respondent's work force, the court declines to grant the order of injunction sought.

Order to enter into a CBA

10. In view of the finding above that the claimant has not met the threshold for order of recognition, the Court declines to compel the respondent to enter into any collective bargaining with the claimant. For that order to issue, the claimant will have to make fresh recruitment of members to meet the requirements of Section 54 of the Labour Relations Act.

Disposition

11. For the reasons highlighted above, the claimant's suit is dismissed. Each party to bear her own costs.

Signed, dated and delivered at Mombasa this 12th day of February, 2016.

ONESMUS MAKAU

JUDGE