



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO 1974 OF 2015**  
**KENYA UNION OF COMMERCIAL, FOOD**  
**AND ALLIED WORKERS.....CLAIMANT**  
**VS**  
**UZURI FOODS LIMITED (GOLDEN HARVEST MILLS).....RESPONDENT**  
**BAKERY, CONFECTIONERY, FOOD MANUFACTURING**  
**AND ALLIED WORKERS UNION (K).....INTERESTED PARTY**  
**RULING**

**Introduction**

1. The Claimant's application dated 5th November 2015 seeks orders compelling the Respondent to deduct and remit union dues from employees who have acknowledged union membership with the Claimant. The Claimant also seeks an order barring the Respondent from victimising the Claimant's members on account of their union membership. The Interested Party was joined in these proceedings on 12th November 2015 by consent of the parties.

**The Application**

2. The Claimant's application, which is supported by the affidavit of the Claimant's Nairobi South Branch Secretary, Jackson M. Kyunuve is based on the following grounds:

- a. That the Claimant's Constitution and Rules allow the Claimant to recruit, enroll and represent the Respondent's unionisable employees;
- b. That the Claimant has the right to represent the Respondent's employees;
- c. That in March 2013, the Claimant recruited 95 out of 176 unionisable employees of the Respondent;
- d. That in 2015, the Claimant recruited a further 438 out of a total of 550 unionisable employees of the Respondent;
- e. That when the recruitment came to the Respondent's attention, it threatened the employees and

attempted to dismiss them.

3. In the supporting affidavit sworn by Jackson M. Kyunuve, he depones that the Respondent has refused to recognise the Claimant stating that it only recognises the Interested Party herein. Additionally, the Respondent has terminated the employment of some of the employees for the sole reason of their union membership. Conciliation efforts towards resolving the dispute have failed.

### **The Respondent's Reply**

4. In a replying affidavit sworn by the Respondent's Human Resource Manager, William Gikuru on 18th November 2015, it is deponed that the Claimant has filed the current suit after inciting the Respondent's employees to go on strike and abandoning them to file Cause No 1830 of 2015.

5. At any rate, the Respondent has a Recognition Agreement with the Interested Party who has recruited and represents more than 51% of the Respondent's unionisable employees. Gikuri further depones that the alleged members of the Claimant have to be verified before any union dues are deducted and forwarded to the Union. More importantly, these members fall short of the required threshold for recognition.

6. It is the Respondent's position that the Claimant is meddling in the sector that is well covered by the Interested Party which has already negotiated and concluded the first Collective Bargaining Agreement (CBA) with the Respondent.

7. Gikuri states that the Respondent Company deals with the processing and baking of bread, confectionery and related food stuffs which securely puts it under the coverage of the Interested Party and not the Claimant. He adds that recruitment of employees by the Claimant in the presence of another union already in the house is intended to interfere with labour relations and cause disruption of company operations.

8. It is further deponed that Golden Harvest Mills is not a separate legal entity but a mere department of the Respondent Company. The allegations of victimisation of the Claimant's members are denied.

### **The Interested Party's Reply**

9. The Interested Party's Reply is contained in a replying affidavit sworn by its General Secretary, Danchael Mwangure, on 2nd December 2015. Mwangure depones that Rule 3(a) of the Interested Party's Constitution allows it to represent employees in the following economic sectors:

- a) Manufacture of bakery products;
- b) Manufacture of sugar, confectionery, cocoa and chocolate;
- c) Manufacture of dairy products;
- d) Grain mill products;
- e) Manufacture of prepared animal feeds;
- f) Manufacture of vegetable and animal oils and fats;
- g) Canning and preserving of fruits and vegetables;
- h) Slaughtering, preparing and preserving meat;
- i) Manufacture of food products not elsewhere mentioned.

10. According to Mwangure, the Interested Party is the sole trade union empowered by its Constitution

and the Labour Relations Act, 2007 to recruit and represent employees in the food manufacturing and allied industries within the Republic of Kenya. He adds that the Respondent Company is engaged in the manufacture of bread and pastries as its core business and as such its employees are eligible for recruitment as members of the Interested Party.

11. Mwangure goes on to state that pursuant to its Constitution, the Interested Party recruited employees of the Respondent as its members and thereafter pursued recognition for purposes of collective bargaining. A revised Recognition Agreement was executed on 13th April 2015.

12. In the meantime, the Claimant recruited members within the Respondent Company despite the economic activity undertaken by the Respondent being within the purview of the Interested Party's coverage. The Claimant's quest for recognition resulted in a dispute which was reported to the Minister for Labour. The Minister ruled against recognition of the Claimant basing his decision on the need to respect demarcation of unions in trade sectors.

13. The Interested Party maintains that it is the sole union legally mandated to represent the interests of employees within the Respondent's enterprise. The Claimant therefore has no capacity to recruit the Respondent's employees as the economic activity undertaken by the Respondent falls squarely within the purview of the Interested Party.

14. Following execution of the Recognition Agreement aforementioned, the Interested Party and the Respondent have initiated the collective bargaining process and the Claimant's actions are an interference with this process.

15. According to the Interested Party, the present suit is an attempt by the Claimant to unlawfully interfere with the Interested Party's sphere of representation which is clearly separate and distinct from those covered by the Claimant's Constitution.

### **Ruling by the Court**

16. Although the Claimant's application and the replies thereto carry mixed issues of representation and recognition, the Court has isolated representation as the only issue for determination in this application. The issue of recognition, being a matter of evidence, will be determined in the main claim.

17. The issue currently before the Court therefore is whether the Claimant has a legitimate stake in the representation of the Respondent's employees. In my understanding, the Claimant pegs its claim on the Respondent's activities in grain milling.

18. Rule 5(a) of the Claimant's Constitution, Rules and Regulations provides that union membership is open to employees engaged in the Distributive and Commerce Sectors, including flour, coffee and spice mills. Similarly Rule 3(a) of the Interested Party's Constitution and Rules opens membership to employees engaged in food manufacturing and related industries, including grain mill products.

19. On the face of these documents, there appears to be potential for overlap and conflict. Significantly, both unions carry the word '*Allied*' in their names, which in my view, provides fertile ground for encroachment. I will however not deal with demarcation at this interlocutory stage.

20. On representation, it is the Claimant's case that the Respondent's employees have a right to choose their union membership. The Court was referred to Articles 36 and 41 of the Constitution of Kenya, 2010 which guarantee the freedom of association and the right of every worker to join a trade union of their choice. Both the Respondent and the Interested Party state that these rights are not absolute and can

therefore be limited by statute and the Industrial Relations Charter for purposes of creating and maintaining harmony in industry sectors.

21. It is true that the rights under Articles 36 and 41 are not absolute. It is my view however, that any limitation must be subjected to the parameters set out under Article 24 which provides that a right or fundamental freedom shall not be limited in a manner that derogates from its core or essential content. Specifically on the fundamental freedom of association, I agree with the holding by **Rika J** in ***Dishon Angoya & 6 Others v Registrar of Trade Unions (Appeal No. 10 of 2011)***, that any limitation must be effected judiciously and fairly. The same principle would apply in the right guaranteed under Article 41.

22. In my opinion, when labour rights were elevated to the Bill of Rights, the whole regime of union representation changed. Trade unions no longer enjoy the benefit of monopoly. Employees now have the constitutional right to choose from a number of unions registered in a certain sector and the existence of a recognition agreement with one union does not extinguish this right. While recognition gives a trade union the benefit of collective bargaining, it does not by itself, lock out all other trade unions.

23. Moreover, employers have themselves opened up their areas of operation to such an extent that it is now common to find one employer engaged in several businesses ranging from garbage collection to assembling of aircrafts. The decisions of this Court must not only be constitutionally oriented but must also take into account these industry developments.

24. It is not in dispute that the Claimant has over time submitted to the Respondent check off forms on account of some unionisable employees within the Respondent's enterprise. Both the Respondent and the Interested Party argue that Golden Harvest Mills where these employees are said to be engaged is not a legal entity but is a mere department of the Respondent. The institutional form of Golden Harvest Mills is in my view, not the issue. The issue is whether the Respondent's unionisable employees who have exercised their choice to join the Claimant, whether exiting from the Interested Party or being non unionised have a legitimate claim.

25. I think they do. In the replying affidavit sworn by the Interested Party's General Secretary, Danchael Mwangure, he states that the Respondent is engaged in the manufacture of bread and pastries as its core business. It appears to make business sense for an enterprise engaged in the manufacture of bread and pastries to also dabble in flour milling. An employer who takes this route must however be prepared to deal with the emerging labour consequences. Overall, an employer who plays in multiple sectors must be prepared to deal with the trade unions engaged in these sectors.

26. From the foregoing, the Court finds no reason for the Respondent's refusal to deduct and remit union dues to the Claimant on account of its unionisable employees who have expressed their choice in this regard.

27. I therefore direct the Respondent to immediately commence deduction of union dues from its employees on account of whom it has received duly signed check off forms from the Claimant and to remit and continue remitting the said union dues to the Claimant until further orders of this Court.

28. I further bar the Respondent from taking any action against the said employees that may be reasonably construed as intimidation or victimisation on account of their union activities.

29. The costs of this application will be in the cause.

30. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF APRIL 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Nyumba for the Claimant

Miss Guserwa for the Respondent

Mr. Amalembe for the Interested Party