



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 340 OF 2014

**KENYA CONCRETE STRUCTURAL CERAMIC TILES WOOD PLY
AND INTERIORS**

DEIGNS EMPLOYEES UNION (K.C.S.C.W & I).....CLAIMANT

VERSUS

KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE AND ALLIED INDUSTRIES

EMPLOYERS UNION (K.B.C.T.& F.I.E.U).....RESPONDENT

Mr Angoya for Claimant

M/s Oyombe for Respondent

M/s Chege for Interested Party

JUDGEMENT

1. The Claimant seeks an order directing the Respondent to deduct trade union dues from the members named in the check –off forms submitted to the Respondent by the Claimant Union.
2. That the Respondent be directed to recognize the Claimant by signing the recognition agreement with the Claimant Union duly submitted to it.
3. The Claimant relies on the memorandum of claim and annexures thereto and in particular the report of the conciliator in which the conciliator recommended the reliefs sought to the Respondent.
4. The Interested party is a rival union in the construction industry which is opposed to the recognition of the Claimant Union by the Respondent. It is not in dispute that both the Claimant union and the interested party are duly registered unions to operate in the sector.
5. The Claimant has operated in the Sector from 2013 pursuant to an order of **Rika J.** whereas the interested party has been in the sector for over 20 years.
6. The issues for determination are;
 - i. Whether the members in respect of whom the union dues are sought to be deducted and remitted have voluntarily joined the Claimant Union.

ii. Whether the Claimant Union has met the threshold of 50 + 1 of all the unionisable employees of the Respondent to warrant recognition.

7. By a ruling dated 31st October 2014 the court referred this matter to conciliation. The conciliator Mr. A. K. Nyaga, reported that he called the parties for meetings three times but its management never attended any of these meetings.

8. That the Union and Shop Stewards attended all the meetings and stated that all the employees are members of the Claimant Union. The conciliator referred the matter back on 8th June 2015, conciliation having failed to bear fruit.

9. The court has carefully perused the statement of claim dated 7th March 2014 and filed on 7th March 2014. There is no averment at all on the number and particulars of the alleged employees of the Respondent who have been duly recruited as members by the Claimant Union. There is also no averment on the number of unionisable employees, in the employment of the Respondent for the Claimant Union to come to the conclusion that it had recruited 50+1 of all unionisable employees of the Respondent.

10. To this extent, the memorandum of claim lacks material averments to sustain a claim for recognition of the Claimant Union by the Respondent. Given the situation, the court is from the statement of claim unaware of the number of employees recruited by the Claimant and the total number of unionisable employees employed by the Respondent.

11. Having said that, it is not for the employer to direct its employees on which union to join or not. The fact that the Respondent has a recognition agreement with the Interested Party does not entitle the Respondent to refuse to implement check-off list of its employees recruited by the Claimant union.

12. All the Respondent is required to do is to confirm with its employees whether they have in fact joined the Claimant Union and proceed to effect the deductions.

13. The issue of recognition arises only after the Claimant Union is able to show that it had recruited 50+1 of all the unionisable employees of the Respondent. The Respondent ought to be non-partisan in this respect. The Respondent must respect freedom of association as expressed by its employees in terms of **Section 4(1) (b) and (c) of the Labour Relations Act, 2007** and **Article 41(2) (c) of the Constitution of Kenya 2010**.

14. In the present case, the Respondent is a member of Kenya Association of Building and Civil Engineering Contractors, Roads and Civil Engineering Contractors Association and the Kenya Federation of master builders for purposes of collective bargaining. That the said association of employers have a Collective Bargaining Agreement with the interested party and therefore the action by the Claimant Union is disruptive of the harmonious collective bargaining and labour relations in the sector.

15. That the Claimant Union needed to recruit a simple majority from among all the members of the association to get recognition and not employees of individual member. This argument is not material in the determination of this suit and is not supported by either **Section 4 and 54 of the Labour Relations Act** and **Article 41 of the Constitution**.

16. The employer cannot hold its employees captive to an association if all of its employees join a new union not recognised by the association.

17. In the final analysis, the Claimant Union has failed to satisfy the court on a balance of probability that it has recruited 50+1% of all unionisable employees of the Respondent but the court is satisfied that the Respondent is obliged to deduct union dues from its employees who have freely and voluntarily joined the claimant union. As a matter fact, the claimant union did not in the statement of claim seek an order for its recognition by the Respondent.

18. Accordingly the court orders;

The Respondent to receive, acknowledge receipt of the duly signed check-off forms of its employees who have acknowledged membership of the Claimant Union and to immediately effect deductions and remit the same forthwith.

19. The Respondent to pay costs of the suit especially because, it failed to attend the conciliation meetings held pursuant to the reference by the court.

Dated and delivered in Nairobi this 1st day of April, 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE