



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 1915 OF 2014
KENYA UNION OF ENTERTAINMENT AND
MUSIC INDUSTRY EMPLOYEES.....CLAIMANT
VERSUS
SPORTS STADIA MANAGEMENT BOARD.....RESPONDENT
JUDGMENT

1. This is an economic dispute involving the claimant union and the respondent. The claimant averred that it had a valid recognition agreement with the respondent and further that the last Collective Bargaining Agreement was concluded on 18th October, 2013 covering the period between 1st October, 2011 to 30th September 2013. The issue in dispute according to the claimant concerned the conclusion of the Collective Bargaining Agreement whose commencement date should have been 1st October, 2013 to expire 30th September 2016.

2. The claimant however has accused the respondent of unwillingness to negotiate. This is as a result of what the claimant perceives as the respondent's persistence on the issue of recognition agreement.

3. According to the respondent, it became reluctant to negotiate the Collective Bargaining Agreement when the issue of recognition became a substantive issue. The respondent contended that there was mass exodus of employees from the claimant union with the result that 67 unionisable workers representing 88/15% of the respondent's unionisable workforce unequivocally indicated by their letters that they had withdrawn from the claimant union and joined a rival union.

4. According to the respondent, this mass migration compromised the mandate of the claimant to engage in meaningful negotiation faced with a situation where it was impractical to continue with negotiations with the claimant on one hand and mounting pressure from unionisable employees to deduct union dues in favour of the rival union, the respondent accorded recognition to the new union being KUDHEIHA Workers Union. This according to the respondent was pursuant to section 54(1) of Labour Relations Act.

5. The respondent further stated that the recognition agreement with the new union was entered five months after notifying the National Labour Board and receiving no objection from the Board. The respondent subsequently negotiated a Collective Bargaining Agreement with KUDHEIHA culminating in the registration of a Collective Bargaining Agreement by the Court as entry number RCA No. 181 of

2015.

6. The Court has carefully considered the dispute herein particularly the contention by the respondent that it has since signed a recognition agreement with another union namely KUDHEIHA. The Court has further noted that the respondent has pursuant to that signed a collective bargaining agreement with the said KUDHEIHA which has since been registered with the Court.

7. The respondent exhibited the recognition agreement as well as the certificate of registration of a Collective Bargaining Agreement issued by the Court.

8. The foregoing scenario therefore makes it impossible for the Court to proceed with the consideration of the dispute referred to it by the conciliator. The dispute as referred was

“review of Collective Bargaining Agreement in respect of housing allowance, night shift allowance, general wage increment and commuter allowance.”

9. When the issue of recognition became a preliminary factor the dispute changed character and the parties or one of them should have referred this as a supplementary issue to the Minister to be resolved first.

10. As things stand now, the issue of recognition and whether the respondent was justified and validly revoked the recognition agreement with the claimant cannot be ignored. Further this issue has not been subject of conciliation prior to reference to Court as required by section 54(6) of the Labour Relations Act.

11. In the circumstances, the Court makes no finding on the dispute as filed and directs that the issue of recognition be resolved first using the mechanisms provided for under the Labour Relations Act.

12. It is so ordered.

Dated at Nairobi this 27th day of May 2016

Abuodha Jorum Nelson

Judge

Delivered this 27th day of May 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent

Abuodha Jorum Nelson

Judge