



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 37 OF 2016

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS CLAIMANT

VERSUS

GUACA STATIONERS LIMITED RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa on 22nd June, 2016)

RULING

1. Before the Court is a Notice of Motion dated 14th of January 2016 where the Claimant seeks Orders that:

1. The Respondent be ordered to commence deduction and remittance of Trade Union dues from employees who have already acknowledged union membership with Claimant/Applicant.

2. The costs of this application be provided for.

2. This Application is grounded on the annexed affidavit of Jackson M. Kyunuve and on the following grounds:

i. That the Applicant/Claimant's Constitution and Rules allow it to recruit, enroll and respect the Respondents' unionisable employees.

ii. That the Applicant/Claimant is the right sector Trade Union and that there is no other Trade Union claiming to represent the same group of employees.

iii. That to date i.e. 23rd April 2015, the Applicant/Claimant has recruited thirteen (13) out of a possible 18 unionisable employees of the Respondent which translates to 72% which is over and above the 51% simple majority as required under Section 54(1) of the Labour Relations Act, 2007 for the purposes of the Recognition.

iv. That the Applicant/Claimant has pursued the issue of Recognition internally as provided for in the Labour Relations Act, 2007 by engaging the Respondent but still the Respondent did not find it necessary to recognize the Applicant /Claimant.

v. That the Respondent has unfairly, unreasonably, unlawfully and unconstitutionally denied the Applicant/ Claimant Recognition even after satisfying the simple majority membership requirement.

vi. That the Respondent's adamant behaviour is aimed at denying their unionisable employees their constitutional right of Trade Union Representation.

vii. That the Respondent's unjustifiable action violates the relevant ILO Conventions, the Labour Relations Act 2007 and the Constitution of Kenya 2010.

viii. That immediately the Application is served upon the Respondent, they are highly likely to victimize, coarse, harass and/or discipline those union members on account of their union membership and given their refusal to accord the Applicant/Claimant Recognition.

3. The Respondent filed a Replying Affidavit deposed to by Himansu Patel.

4. The Respondent avers that the Claimant has no mandate from its constitution to recruit members from the Respondent's company seeing that the Respondent is a stationary company and not a tobacco company.

5. The Respondent further avers that the Claimant failed to recruit a simple majority as provided for by Section 54(1) of the Labour Relations Act therefore, they did not sign the recognition agreement, and that persons listed in the Claimants check off dated 23rd April 2015 are not all employees of the Respondent company at the date of signing the check off list namely:

- a. **No. 617 Kennedy Ouma Otieno**
- b. **No . 621 Paul Kungulu Kavita**
- c. **No 614 John G Otieno**
- d. **No 623 Andronicus Muavoka**

6. Moreover, the Respondent avers that they had 21 unionisable employees and not 18 as indicated so the Claimant was yet to reach a simple majority and the check offs provided with signatures appended on the 14th of January 2014 were actually signed 7 months later on the 26th of August 2014.

7. The Respondent avers that the Claimant registered a trade dispute with the Chief Industrial Relations Officer who convened a meeting and made recommendation issued to parties dated 10th December 2014, however, the Conciliator recommendation did not take into account the fact that the Claimant did not have the mandate and *locus standi* to recruit members from the Respondent Company as a right sector trade Union.

8. The Respondent avers that the Claimant are not entitled to an order directing unconditional signing of the recognition agreement since the Respondent has not approved the draft Recognition Agreement allegedly forwarded by the Claimant.

9. The Respondent further states that the Claimant suit is premature, frivolous, vexation and bad in law and ought to be dismissed with costs to the Respondent.

10. Having considered the submissions of both parties, this Court is averse to the provision of Section 54 (1) (2) and (3) of Labour Relations Act which states as follows:

1. An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

2. A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the

trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.

3. An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.

11. The Claimant Applicants aver that they have complied with Section 54(1) above having recruited 72% of the unionisable employees.

12. The Respondent on their part deny that the Claimant has recruited the simple majority. According to the Claimant, the recruited 13 members as per Appendix JKM 2, these, they aver are out of a possible 18= $13/18=72\%$.

13. The Respondent on their part deny that the Claimant reached a simple majority as they have 21 unionisable employees and that 4 out of the 13 are no longer in their employment. Removing 4 out of 13 would leave 9 employees if that were true are recruited. However this dispute was reported to a Conciliator who found that the Claimant had recruited 11 members.

14. Despite the fact that the Respondent aver that they have 21 unionisable employees, they have not produced their list of employees and even if they are truly 21 and not 18, 11 employees constitute more than 50% of the recruited employees and therefore fall within the threshold expected under Section 54 (1) of Labour Relations Act.

15. Having found as above, the next issue is whether the Claimants are the correct union in this sector. The Respondent have submitted that the union in question is not the proper one in this sector and they refer to page 16 of the Claimant's Constitution which refers to membership and that the Respondent is not one of them.

16. Rule 5 of the Claimants' constitution states that the union shall embrace all employees:

- i. ***Warehouses, Merchandises, Import and Export business.***
- ii. ***Flour, coffee and spice mills.***
- iii. ***All Food Processing Industries.***
- iv. ***Banks, Insurance and Financial Institutions.***
- v. ***Cinema halls, show grounds and exhibitions.***
- vi. ***Supermarkets, shops, Retails and Wholesale outlets, distribution and supply companies.***
- vii. ***Watchmen organizations***
- viii. ***Daily and mill industries.***
- ix. ***Co-operative Societies.***
- x. ***Statutory Boards.***
- xi. ***Slaughter Houses and butcheries.***
- xii. ***Property management.***
- xiii. ***Cooking oil refineries.***
- xiv. ***Water Conservation and Pipeline Corporation, water service regulatory boards.***

b. Bottling and Brewing Section. Which shall embrace all employees engaged or employed in bottling, brewing, distilling of alcohol beverages, bottling of soft drinks and drinking.

c. Laundry Cleaners and Dyers Sector Which shall embrace employees engaged in dyeing, dry cleaning services and laundry industries.

-----“

17. The Respondent has submitted that none of these areas fall within their domain and so the Claimant is not the right union for them.

18. The Claimant on their part submitted that selling and supplying of stationary i.e. retail and wholesale is their domain and so are the right union.

19. Having considered this list, it is my finding that the area of shops, retail and wholesale outlets would easily fall within the Claimant's mandate.

20. Having found as above, I find that the Claimant's Application has merit and I allow it and order that the Respondent do forthwith commence deduction and remittance of Trade Union dues from employees who have already acknowledged union membership with the Claimant/Applicant.

21. I also order that the Respondent should be and is hereby restrained from victimizing, intimidating, coercing, harassing, terminating, dismissing or disciplining the Claimants' members on account of their trade union membership.

22. The costs in the course.

Read in open Court this 22nd day of June, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Taco holding brief for Owiyo for Claimant

No appearance for Respondent