



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT AT MOMBASA

CAUSE NUMBER 677 OF 2015

BETWEEN

THE KENYA UNION OF PRINTING, PUBLISHING,

PAPER MANUFACTURING AND PACKAGING INDUSTRIES

[KUPRIPUPA WORKERS].....CLAIMANT

VERSUS

MFI DOCUMENTS SOLUTIONS.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ms. Njeri, Industrial Relations Officer for the Claimant

Ms. Muenzi Advocate instructed by Kilonzo & Company, Advocates for the Respondent

ISSUES IN DISPUTE: RECOGNITION AGREEMENT, VICTIMIZATION OF EMPLOYEES.

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Claimant filed a Statement of Claim on 3rd September 2015. It asserts to have recruited Respondent’s Unionsable Employees, on various dates. Subsequent to the recruitment, the Claimant forwarded Check-Off Lists and a model Recognition Agreement. The Claimant requested the Respondent to deduct and remit trade union dues with regard to recruited Employees. Secondly the Respondent was requested to execute the Recognition Agreement. The Respondent did not act on these requests. Instead, the Respondent’s Managing Director visited the Claimant’s Offices, demanding the Claimant stays away from the Respondent’s enterprise. The Respondent thereafter victimized recruited Employees. It demanded they rescind their union membership. The Claimant’s Organizer within the enterprise was dismissed. Other Employees were irregularly transferred. The Claimant seeks the intervention of the Court by grant of the following orders against the Respondent:-

- a. Unconditional reinstatement of Mr. Eric M. Njiru whose services were wrongly terminated.

- b. Immediate and unconditional withdrawal of transfers for those sent on transfer.
- c. Immediate deduction and remittance of trade union dues in favour of the Claimant.
- d. The Respondent to sign the Recognition Agreement with the Claimant Union to pave way for CBA negotiations.
- e. Costs and any other relief the Court may deem it fit to grant.

2. The Respondent did not file a Statement of Response.

3. Parties attended Court on 26th February 2016, when the Claimant insisted on prosecuting the Claim, and was allowed by the Court to do so, having approached the Court under certificate of urgency. Two Witnesses, Eric Mugendi Njiru who was previously Respondent's Customer Relations Officer, and Gideon Mutiso Wambua, Claimant's Mombasa Branch Secretary gave evidence. Both Parties subsequently filed their Closing Submissions.

4. In its Closing Submissions, the Respondent raises some fundamental issues. On record are two Statements of Claim. One was filed on the 3rd September 2015, the other on 22nd September 2015.

5. In the view of the Court this is a fatal defect in the Claim. The Respondent would not know which Statement of Claim to respond to. The prayers are not exactly the same in the two Statements of Claim. One for instance, specifically demands for reinstatement of Eric Njiru, the other is silent on this.

6. The Industrial Court [Procedure] Rules 2010 do not allow for double Statement of Claims, as a way of initiating Claims.

7. Apart from these defects, there are other requirements of the law, which the Claimant has not met. Section 54 [6] of the Labour Relations Act 2007, states a Trade Union may refer a dispute on recognition, for conciliation, in accordance with Part 8 of the Act. Section 54 [7] states if the dispute is not settled on conciliation, it may be escalated to the Industrial Court for adjudication.

8. Part 8 covers the conciliation process. Section 74 [a] covers urgent referral of recognition disputes to the Industrial Court. If a dispute concerns recognition, a Trade Union may refer the same urgently to the Industrial Court, in accordance with Section 62 of the Act. Section 62 regulates referral to conciliation.

9. The Claimant side-stepped conciliation and approached the Court directly. The dispute was filed under certificate of urgency. The law requires urgent referrals should be preceded by the conciliation process under Section 62, as read together with Sections 54 [6], 54[7] and Section 74 [a] of the Labour Relations Act. It is the intention of the law that recognition disputes are taken through the conciliation process, before being filed in Court. The Claimant has not suggested anywhere in its Pleadings, why the dispute was not taken through conciliation.

10. The Claimant wrote a protest letter to the Respondent, dated 10th August 2015. That letter was copied to among others the County Labour Officer Mombasa. It was some form of report to the Labour Office to intervene. The Claimant should have made its report to conform to Section 62 of the Labour Relations Act.

11. The Court is satisfied the Claim is improperly before it. There are two Statements of Claim. The second is not an amendment of the first, but an original document. The prayers are not exactly the same, so that the Court cannot strike out one of the Statements and proceed on the basis of the other, without being presumptuous. The Claim is largely on recognition. It was filed under certificate of urgency. It did not meet the requirements of the law with regard to conciliation.

12. *The Court shall therefore strike out both Statements of Claim, with no order on the costs. The Claimant may make a formal report to the Minister under Section 62, and re-approach the Court in accordance with the law.*

Dated and delivered at Mombasa this **1st day of July 2016**

James Rika

Judge