



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 813 OF 2016

**TRANSPORT AND ALLIED WORKERS
UNION.....CLAIMANT**

VS

**RAPID KATE SERVICES LIMITED.....1ST
RESPONDENT**

**KENYA SHIPPING, CLEARING AND WAREHOUSES WORKERS UNION.....2ND
RESPONDENT**

JUDGMENT

Introduction

1. This action arises from a dispute on union membership of the 1st Respondent's employees as between the Claimant and the 2nd Respondent, both trade unions registered in Kenya.

2. The Claimant's claim is contained in a Memorandum of Claim dated 9th May 2016 and filed in Court on even date. The 1st and 2nd Respondents filed separate replying affidavits on 16th May 2016. The parties also filed bundles of supporting documents.

The Claimant's Case

3. The Claimant states that 90% of the 1st Respondent's unionisable employees are its members. Pursuant to a Recognition Agreement between the Claimant and the 1st Respondent, several Collective Bargaining Agreements (CBAs) have been concluded and registered.

4. In February 2016, the Claimant entered into negotiations with the 1st Respondent for the next CBA for period between 2016 and 2018.

5. The Claimant accuses the 2nd Respondent of encroaching into its area of representation.

6. The Claimant seeks the following prayers:

a) That the CBA between the Claimant and the 1st Respondent be registered;

b) That the 1st Respondent be directed to implement the parties' CBA;

- c) That the Claimant be declared as the most representative union in the 1st Respondent's unionisable establishment;
- d) That the 2nd Respondent be restrained from encroaching on or interfering with the freedom of the Claimant's members who are employees of the 1st Respondent.

The 1st Respondent's Case

7. In a replying affidavit sworn by the 1st Respondent's General Manager, Henry Omolo, it is deponed that the 1st Respondent has no problem with the implementation of the CBA signed on 8th March 2016, save for the findings of the Conciliator dated 18th April 2016 that due process was not followed in executing the CBA.

8. Omolo further depones that some of the employees who were members of the 2nd Respondent opted to resign and join the Claimant citing unsatisfactory services and misunderstanding within the union office. By letter dated 15th April 2011 written by a shop steward, a list of the employees who had opted to resign from the 2nd Respondent was forwarded.

9. In response, the 2nd Respondent wrote to the employees of the 1st Respondent on 6th May 2011, asking for urgent meetings on 11th May 2011 in Nairobi and on 21st May 2011 in Mombasa.

10. On 12th October 2011, the Claimant reported a trade dispute between itself and the 1st Respondent accusing the 1st Respondent of failure to effect signed check off forms.

11. On 11th January 2012, the 1st Respondent wrote to the Ministry of Labour reporting receipt of collective bargaining proposals from three workers unions, being the Claimant, the 2nd Respondent and Dock Workers Union.

12. On 23rd January 2012, the 2nd Respondent reported a trade dispute between itself and Dock Workers Union.

13. Having received no response to its letter dated 11th January 2012 from the Ministry of Labour, the 1st Respondent wrote to the 2nd Respondent on 7th February 2012, withdrawing from the 2nd Respondent and officially recognizing the Claimant with a view to concluding a CBA. The 2nd Respondent did not raise any issue with the position taken by the 1st Respondent.

14. Omolo concedes that 90% of the 1st Respondent's employees are members of the Claimant and asks the Court to register the CBA negotiated between the Claimant and the 1st Respondent.

The 2nd Respondent's Case

15. In a replying affidavit sworn by the 2nd Respondent's General Secretary, James Onkoba Tongi on 16th May 2016, it is deponed that this matter is prematurely before the Court.

16. Tongi takes issue with the list of members filed by the Claimant since it is not on official letterhead as required under Section 48(2) of the Labour Relations Act.

17. Tongi accuses the Claimant and the 1st Respondent of frequently diverting the 2nd Respondent's union dues to the Claimant, in violation of the law. He states that the 1st Respondent favoured the Claimant thus disowning its letter dated 24th December 2015 and signing a CBA with the Claimant.

18. In the submissions filed on behalf of the 2nd Respondent on 8th June 2016, it is submitted that the list provided by the shop steward Daniel Oredi does not constitute resignation from the 2nd Respondent's membership as required under Section 48 of the Labour Relations Act.

Findings and Determination

19. In his report dated 18th April 2016, the Conciliator faulted the format in which the employees sought to resign from the 2nd Respondent. He took the view that the mass resignation communicated in Oredi's letter dated 15th April 2011 was not the appropriate format for communicating resignation of employees from a trade union.

20. I have looked at Section 48 (7) and (8) of the Labour Relations Act and find that nothing in these provisions bars employees from communicating their intention to resign from a trade union by appending their signatures to a form which is forwarded vide a covering letter by their shop steward. The only situation where the Court could interfere is where there is evidence of coercion on the employees. There is no evidence of any such coercion in the case.

21. Under Article 159(2) of the Constitution, this Court is enjoined to render substantive justice without undue regard to technicalities. Applying this standard, I find the argument pursued by the 2nd Respondent and the Conciliator that the resignations by the employees were irregular for want of form to be without basis. The same fate would befall the 2nd Respondent's argument on the list of members filed by the Claimant.

22. I will therefore consider the documents filed by the parties on merit. The 1st Respondent filed a list showing a unionisable establishment of 231 out of whom 216 are shown as members of the Claimant. From the documentary evidence filed in Court, it seems to me that the Claimant enjoys membership majority within the 1st Respondent's unionisable establishment and the Court finds no reason to deny the 1st Respondent's employees the benefits of a CBA.

23. I therefore direct that the CBA negotiated by the Claimant and the 1st Respondent shall be presented to a Judge of this Court for registration.

24. Each party will bear their own costs.

24. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2016

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JUDGE

Appearance:

Mr. Mihadi (Union Representative) for the Claimant Miss Githii for the 1st Respondent

Mr. Tongi (Union Representative) for the 2nd Respondent