



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 149 OF 2015**

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED**

**WORKERS .....CLAIMANT**

**-VERSUS-**

**DECOR HARDWARE.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 9<sup>th</sup> September, 2016)**

**JUDGMENT**

The claimant filed the memorandum of claim on 04.09.2015. The claimant's case is that the respondent is in the business of selling building materials which falls within the sector for which the claimant is registered to recruit and represent workers.

The claimant has recruited at least 30 of the 37 unionisable workers in the respondent's employment and the 30 employees have signed the relevant prescribed Form S signifying that the union dues should be deducted and remitted by the respondent as provided for in section 48 of the Labour Relations Act, 2007 as read with section 19(f) of the Employment Act, 2007. It is the claimant's case that having attained 81% recruitment of the unionisable workers in the respondent's employment, the union is entitled to recognition for purposes of collective bargaining by the respondent under section 54 of the Labour Relations Act, 2007 because the union represents simple majority of the unionisable workers as provided in the section.

The respondent filed the response to the claim on 23.10.2015 through Waweru Macharia & Company Advocates. The respondent prayed that the memorandum of claim be dismissed with costs. The respondent denies that the claimant has achieved the threshold for the recognition. The respondent says that it has recognised another union and further that it has only 25 unionisable employees out of whom the list of recruited employees filed by the claimant has only 10 names. The court has considered the submissions and the material on record and makes findings as follows:

1) The claimant recruited the 30 employees on 2.12.2013, 4.12.2013, 5.12.2013, 7.12.2013, 10.12.2013, 11.12.2013, 13.12.2013, 17.12.2013, 19.12.2013, 20.12.2013, and 23.12.2013. There is no material before court to show that the employees as recruited on the material dates were not employees of the respondent. The respondent has stated that the prevailing population of its unionisable staff as at the hearing of the suit was 25 but has not disputed and showed that as at the time the claimant says it recruited the 30 employees, the population was 37 as stated for the claimant. The court finds that on the material before the court as at the time of the recruitment the claimant attained the statutory simple majority and is entitled to recognition.

2) Deduction of union dues is independent of recognition and under section 48 of the Labour Relations Act, 2007, once Form S signed by the employees is signed, the union dues must, 30 days after the service, be deducted and remitted by the employer who is so served. Thus the court returns that the claimant is entitled for the respondent to deduct and remit all union dues with respect to workers who have signed the Form S and the respondent duly notified.

3) There is no material to suggest that the claimant is not the sector union for the kind of business

the respondent is carrying out.

In conclusion, judgment is entered for the claimant against the respondent for:

- 1) The respondent to deduct and remit union dues with respect of all its employees who have signed Form S effective end of September 2016 and not later than 05.10.2016 failing which the respondent will pay such union dues for such employees out of its own funds effective end of September, 2016 plus interest at court rates till full payment.
- 2) The parties to negotiate in good faith and to conclude the relevant recognition agreement and not later than 31.12.2016.
- 3) The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered in court at Nyeri this Friday, 9<sup>th</sup> September, 2016.**

**BYRAM ONGAYA**

**JUDGE**