



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 1792 OF 2014**

**BANKING INSURANCE & FINANCE UNION (K) .....CLAIMANT**

**VERSUS**

**NATIONAL HOUSING COPORATION .....RESPONDENT**

**JUDGMENT**

1. The dispute herein concerns allegations by the claimant of refusal to sign a recognition agreement on the part of the respondent. By a memorandum of claim filed on 13<sup>th</sup> October, 2014, the claimant averred among others that the claimant recruited one hundred and fifty three unionsable staff in the employ of the respondent and served the check off to the respondent to effect union dues and sign recognition agreement. After submission of the check-off the respondent started intimidating and harassing the staff and several of them withdrew their membership for fear of losing their jobs. The claimant started fresh recruitment and recruited one hundred and sixty seven members and once again presented check-off forms.
2. According to the claimant, as at 30<sup>th</sup> July, 2013 it had one hundred and fifty four members translating to 57% of the total workforce. The claimant consequently forwarded the draft recognition agreement to the respondent and also proposed a meeting to discuss the same but the respondent proposed a meeting after January, 2013.
3. In accordance with section 62 and 74 of the Labour Relations Act, the claimant reported the existence of a Trade Dispute to the Minister who appointed Mr. Onuko as the Conciliator. The parties met before the conciliator and the respondent effected the deduction of union dues but failed to sign the Recognition Agreement. The Conciliator therefore issued a certificate of unresolved dispute.
4. The respondent on the other hand averred that it implemented the check off forms as requested however it received some complaints from some members of staff regarding the deductions. The effect of the complaints were that the staff had been coerced into signing the check-off forms without explanations being made. Consequently the respondent inquired from its employees about the manner in which the recruitment had been undertaken.
5. On 25<sup>th</sup> April, 2012, the respondent wrote to the claimant indicating that they needed to consult with the Board of Directors. Further the respondent informed the claimant that Board matters had been in abeyance and it was unable to revert immediately.
6. The respondent further averred that on 6<sup>th</sup> September, 2012 it received a letter from the conciliator

inviting the parties to attend a meeting scheduled for 25<sup>th</sup> September, 2012. Upon attending the meeting, the parties agreed to settle the dispute on their own including the issue of signing recognition agreement.

7. The respondent subsequently wrote to its employees informing them that union dues would be recovered from those employees who had acknowledged membership to the claimant union. On 19<sup>th</sup> October, 2012 the respondent received a letter signed by 76 of its employees requesting them to stop further deductions to the claimant union. Consequently on 26<sup>th</sup> October, 2012 the respondent wrote to the claimant union informing them that several employees had resigned from the union and that no further deduction would be made from their salaries. The respondent therefore contended that the claimant union failed to meet the legal threshold for recognition under section 54 of the Labour Relation Act.

8. Section 54 of the Labour Relations is couched in mandatory terms in that once a trade union represents the simple majority of unionisable employees an employer shall recognize such union. What this implies is that once it is established that a union has attained the simple majority of unionisable employees, recognition becomes automatic and not negotiable. The Court can so order where an employer has refused to accord such recognition.

9. In the matter before me there seems to be contention over whether the claimant union has attained the necessary simple majority to earn it recognition by the respondent. Where there is such contention, the proper order to make would be to order for balloting on the shop floor under supervision of a Court appointed returning officer. The issue is mathematical and is better resolved through such a process than arguments and contestation before the Court.

10. In that regard I hereby order the parties herein to appear before the County Labour Officer where the respondent has presence and a ballot be conducted by an officer appointed by such County Labour Officer to ascertain the number of employees in the respondent's employ who are members of the claimant union and a report filed before this Court within sixty days to enable the Court make final orders.

11. The matter will in that regard be mentioned on 16<sup>th</sup> January, 2017 for further orders.

12. It is so ordered.

Dated at Nairobi this 28<sup>th</sup> day of October 2016

**ABUODHA JORUM NELSON**

**JUDGE**

Delivered this 28<sup>th</sup> day of October 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**ABUODHA JORUM NELSON**

**JUDGE**