



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 879(N) OF 2010

KENYA CHEMICAL & ALLIED WORKERS UNION.....CLAIMANT

VERSUS

STRATEGIC INDUSTRIES LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant is a registered trade union representing workers within the chemical and allied industries in Kenya. The Union brings this action seeking recognition by the Respondent for purposes of collective bargaining on behalf of its members.
2. The Claimant's claim is contained in a Statement of Claim dated 29th July 2010 and filed in Court on 2nd August 2010. The Respondent filed a Memorandum of Reply on 3rd November 2010 and a supplementary Memorandum on 16th February 2012.
3. When the parties appeared before me on 26th May 2016, they agreed to dispense with the claim by way of written submissions.

The Claimant's Case

4. The Claimant gives the genesis of the dispute as 24th July 2007 when it submitted to the Respondent a proposed Recognition Agreement together with check off forms signed by 363 employees of the Respondent, requiring the Respondent to deduct union dues for remittance to the Claimant.
5. The Respondent neither signed the Recognition Agreement nor did it effect union dues deductions but instead started to intimidate and terminate the employees who had joined the Union.
6. The Claimant reported a dispute to the Minister for Labour who appointed a Conciliator. The Respondent did not attend any of the conciliation meetings hence this case.
7. The Claimant contends that it has recruited a majority of the Respondent's unionisable employees into its membership.
8. In a supplementary affidavit sworn by the Claimant's National General Secretary, Were Dibo Ogutu on 19th July 2011, he depones that in the month of April 2011, the Claimant had received further check off forms on account of 1647 employees who had consented to union membership.

9. Ogutu adds that between July and November 2007, the Claimant had recruited 363 employees bringing the total number recruited to 2010.

10. The Claimant seeks the following orders:

- a. An order directing the Respondent to recognise the Claimant for purposes of collective bargaining;
- b. An order directing the Respondent to deduct and remit union dues to the Claimant;
- c. A deterrent order for breach of Section 50(10) of the Labour Relations Act.

The Respondent's Case

11. In its Reply filed on 3rd November 2010 and supplementary Memorandum filed on 16th February 2012, the Respondent states that as at 1st July 2007, it had employed 2065 employees who subsequently increased to 3430 as at July 2010.

12. The Respondent further states that at a conciliation meeting held on 16th July 2009, it had requested the Claimant to avail a list of employees recruited into union membership.

13. On 21st July 2009, the Claimant provided a list of 363 employees. However upon scrutiny of the list, it emerged that 3 names were repeated, 115 were unknown to the Respondent, 68 were former employees and only 144 were the Respondent's employees.

14. In its supplementary Memorandum, the Respondent states that 297 employees listed by the Union as having been recruited had denied any such recruitment. The employees had sworn an affidavit disowning the names and signatures on the check off forms submitted by the Claimant.

15. In response to the Claimant's claim that it had recruited a majority of the Respondent's employees, the Respondent pointed out that the Claimant claims to have recruited 2010 employees whereas the list provided had only 1785 names.

16. Further, from the list submitted by the Claimant, 117 names had been repeated, 5 names were unknown and 866 of those named had left the Respondent's employment.

17. The Respondent states that it had carried out a page by page analysis of the check off forms submitted by the Union with the following results:

- a. 914 employees were still working;
- b. 844 had left the Respondent's employment;
- c. 5 were unknown;
- d. 22 were deceased;
- e. 297 had disclaimed union membership.

Findings and Determination

18. There are two issues in dispute in this case:

- a. Recognition of the Claimant by the Respondent.
- b. Deduction of union dues;

Recognition

19. Section 54 (1) of the Labour Relations Act, 2007 provides as follows:

54. (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.

20. This provision carries specific duties for the employer and the trade union. On the part of the employer, there is the duty to recognise a trade union that has recruited a simple majority from the employer's unionisable establishment. On its part, the trade union must avail documentary evidence that it has indeed achieved such recruitment.

21. In its responses and submissions, the Respondent pointed out irregularities in the lists provided by the Claimant. Apart from reiterating its right to recognition, the Claimant made no attempt to explain the discrepancies cited by the Respondent. Recognition is a matter of verifiable numbers and in the absence of tangible evidence of recruitment of a simple majority the Court has no basis to order recognition.

22. The Claimant referred the Court to the holding by **Ongaya J** in ***Kenya Chemical and Allied Workers Union v Ruby M.W.F Flour Mills Limited (Nakuru Cause No 102 of 2013)*** to the effect that the right to recognition survives reduction in numbers below simple majority.

23. I respectfully hold a different view. To my mind, employees join a trade union based not only on its philosophy and ethos but also its ability to negotiate on their behalf. For this reason, if employees lose faith in their trade union, they are at liberty to resign from it either in favour of a rival union or to seek direct negotiation with the employer.

24. Recognition gives a trade union the premiere advantage of collective bargaining with the possibility of collecting agency fees from non members. It seems to me therefore that it cannot be just that a trade union that no longer enjoys a simple majority continues to hold the right to recognition for purposes of collective bargaining.

25. It is my view that the Claimant has failed to avail evidence in support of its stake to recognition and this claim must therefore fail.

Deduction of Union Dues

26. With regard to the claim on deduction of union dues, the Respondent has undertaken to effect deductions upon submission of the relevant check off forms. I therefore find no reason to make a determination on this issue.

Final Orders

27. Overall, the Claimant's claim fails and is dismissed.

28. Each party will bear its own costs.

29. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 7TH DAY OF OCTOBER 2016

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JUDGE

Appearance:

Mr. Gwako (Union Representative) for the Claimant

Mr. Ouma for the Respondent