

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 263 OF 2015

TRANSPORT WORKERS' UNION OF KENYA.....CLAIMANT

VERSUS

THREE WAYS SHIPPING SERVICES [K] LTD.....RESPONDENT

RULING

Introduction

1. The Respondent has brought the Notice of Motion dated 2.2.2016 seeking for an order to dismiss or strike out the Claimant's Suit for being bad in Law and an abuse of the Court process. The Grounds upon which the Motion stands are that the Claimant has only recruited 22 out of 158 Unionizable staff and as such it lacks authority to represent the said workers for purposes of collective bargaining. The Motion is supported sworn by the Affidavit of Fredrick Opot on 2.2.2016.

2. The Motion has not been opposed by the Claimant despite her Counsel being served with the same and hearing Notice as per the affidavits of service filed.

Analysis & Determination

3. After careful consideration of the Pleadings, Motion and Supporting Affidavit, it is clear that the parties herein have in force a Recognition Agreement for purposes of negotiating terms and conditions of service for all the unionizable staff of the Respondent. The issue for determination herein is whether the Suit is bad in Law and an abuse of the process of the Court.

4. The reason why the applicant believes that the Suit is bad in law and an abuse of Court process is that the Claimant has not recruited a simple majority of her Unionizable Staff. According to her, only 22 out of 158 unionisable workforce have one members of the Claimant and as such she lacks the legal mandate under section 54 of the Labour Relations Act to represent the Respondent's unionisable staff for purposes of collective bargaining.

5. After careful considerations of the Claimant's Pleadings, I do not agree with the applicant that the Suit is bad in Law or otherwise an abuse of the process of the Court. On the contrary, I find that the Suit is properly drafted and well founded in Law. It has not been disputed that the Parties herein have a Recognition Agreement in force. That the said Agreement is not the subject of challenge herein or elsewhere. Consequently, I see nothing wrong in the Claimant filing this Suit to agitate for CBA in favour of her members and any other unionizable staff who will pay Agency fee under the law. It is trite law that once a Trade Union is given recognition by an Employer, the Union so recognized continues to agitate for the interests of her members in the establishment until the said recognition is extinguished. I therefore see no merits in the Motion.

Disposition

6. For the reasons stated above, the Notice of Motion dated 2.2.2016 is dismissed. No order as to costs.

Dated, Signed and delivered this 18th day of November 2016.

O. N. MAKAU

Judge