



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 272 OF 2016**

**KENYA CHEMICAL & ALLIED**

**WORKERS UNION**

**CLAIMANT**

**v**

**RELIANCE PLASTICS LIMITED**

**RESPONDENT**

**JUDGMENT**

1. Before Court is a recognition dispute which was filed together with a motion under certificate of urgency on 19 July 2016.
2. On 8 September 2016, the Respondent's advocate informed the Court that it would not oppose the motion which sought a hearing on priority basis, and the Court therefore ordered that the cause be scheduled for hearing with directives as to filing of pleadings.
3. When the Cause was mentioned on 22 September 2016, the Court was informed that the Respondent had filed and served a Response and that the parties had agreed to proceed on the basis of the record and submissions to be filed (such a course is envisaged under Rule 21 of the Court's Rules).
4. The Kenya Chemical & Allied Workers Union (Union) filed its submissions on 24 October 2016, while Reliance Plastics Ltd (Respondent) filed its submissions on 4 November 2016.

**Background**

5. The Union recruited several of the Respondent's employees and forwarded the names in the prescribed form (Form S) ordinarily known as check-off forms, seeking recognition and deduction of monthly union subscriptions.
6. The Respondent did not oblige the Union and on 10 June 2015 it reported a trade dispute to the Cabinet Secretary pursuant to the requirements of section 62 of the Labour Relations Act.
7. The Cabinet Secretary accepted the trade dispute and appointed a Conciliator, and the parties were informed through a letter dated 29 July 2015. The letter requested the parties to furnish the Conciliator with their written proposals.
8. On 4 **August September** 2015, the Conciliator called for a conciliation meeting for 18 August 2015. He also asked for written submissions.

9. On 10 September 2015, the Respondent wrote to the Conciliator and informed him that It has been brought to our attention, the consent of our workers joining the union. Reliance Plastics Limited has no objection whatsoever. Kindly note that the company would not like to be unionized, therefore, please arrange a system where individual members bank their union dues directly upon receiving their remuneration without involving the Company. However, upon your written request the Company may assist in processing the union dues at a chargeable fee.

10. On 14 September 2015, the Union wrote to the Respondent decrying the tone of its letter to the Conciliator

11. The Conciliator called for a further meeting on 5 October 2015 through a letter dated 18 September 2015.

12. Seeing no resolution in sight, the Union moved Court.

### **Union's case**

13. The Union's case is that it recruited 18 out of 19 of the Respondent's unionisable employees and submitted check-off forms to the Respondent in order to be granted recognition, but the Respondent declined leading to the unresolved conciliation process.

14. The Union contends it had met the statutory threshold for grant of recognition and that union membership was a constitutional and statutory right of employees.

### **Respondent's case**

15. The Respondent in the Response denied receipt of the check-off forms or that the Union reported a trade dispute to the Cabinet Secretary.

16. It further denied that the Union had recruited a simple majority of its unionisable workforce or that it was in violation of the law.

### **Applicable legal framework**

17. Organisational rights of trade unions *qua* union has been given constitutional anchor in Article 41(4) and statutory foundation and content in section 8 of the Labour Relations Act. Employers have similar rights.

18. Employees have also been assured of associational and labour rights in Article 41(2) of the Constitution, and which rights have been amplified in section 4 and 5 of the Labour Relations Act.

19. On the threshold to be met by a Union before it is granted recognition, section 54 of the Labour Relations Act has set the standard to be met.

20. Section 48 of the Labour Relations Act on the other hand speak to deduction of union subscriptions.

### **Evaluation**

#### *Simple majority*

21. An employer is always privy to the number of its workforce which is potentially unionisable.

22. In the present case, the Respondent has made no meaningful response if any to the contention by the Union that it had recruited 18 out of 19 unionisable employees of the Respondent.

23. A simple arithmetic would show that the union has met this aspect of the statutory requirements.

## *Right union*

24. The Union exhibited a copy of its constitution and it is clear that among the sectors it is allowed to organise include employers involved in manufacturing of *basic industrial chemicals, vegetables, animal oil and fats, pottery china, earthenware among other miscellaneous chemical products.*

25. The Court also notes that the Respondent did not dispute that the Union's constitution allows to organise within its (Respondent's) area of operation/industry.

26. On the basis of the material on record, the Court finds that the Union has met the statutory threshold for grant of recognition.

## **Deduction of union dues**

### *Ministerial Order*

27. The back of the check-off forms forwarded to the Respondent informed it of a ministerial order gazetted as Gazette Notice No. 7316 of 1 July 2011.

28. By signing the check-off forms, the employees were not only signalling their having joined the Union but also giving the Respondent written instructions to commence deduction of monthly union subscriptions and remit the same to the Union.

29. Further, in terms of section 17(11) of the Employment Act, 2007 an employee is free to dispose of his/her wages without limit.

30. Therefore, the Respondent ought to have commenced deduction of monthly union subscriptions after the expiry of 30 days from the time it received the check-off forms.

31. The Respondent made much of the fact that it does not oppose the Union save that the employees should pay monthly subscriptions direct to the Union.

32. However, that demand or desire has never been the practice or tradition in this country. The dues are by custom and practice deducted at source by the employer and remitted to the Union.

## **Whether a trade dispute was reported**

33. The Respondent contended in the Response that a formal trade dispute was not reported.

34. That position cannot be true because the Union exhibited a copy of the letter making the report and a communication from the Cabinet Secretary accepting the report.

35. In fact, the Respondent at one point wrote to the Conciliator acknowledging that the employees had a right to join a trade union and that it had no objection.

## **Conclusion and Orders**

36. The Court finds and holds that the Union has met the statutory threshold for grant of recognition and deduction and remission of monthly union dues and orders the Respondent to

(i) Grant recognition to the Union within 21 days from today.

(ii) Commence deducting and remitting to the Union monthly dues in respect to the employees who signed the Form S.

37. Because of the anticipated social partnership between the parties, each party to bear its own costs.

**Delivered, dated and signed in Nakuru on this 2<sup>nd</sup> day of December 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Mr. Mueke, Assistant Secretary General, Kenya Chemical & Allied Workers Union

For Respondent Mr. Otieno instructed by Geoffrey Otieno & Co. Advocates

Court Assistant Nixon/Daisy