



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 783 OF 2013
KENYA SHOE AND LEATHER WORKERS

UNION CLAIMANT

VERSUS

DOG BONES LIMITED RESPONDENT

Mr. Julius Maina for Claimant

Mr. Ouma for Respondent

JUDGMENT

1. The Claimant filed a memorandum of Claim dated 23rd May 2013 seeking an order that;
 - a. the Court directs the Respondent to deduct and remit trade union dues
 - b. the Court directs the Respondent to sign Recognition Agreement.
2. Claimant submits that it has been locked in a recognition dispute with the Respondent for a long time and the Court made an award in which the Court directed the Claimant to recruit members between 8th October 2012 and 26th April 2013. That the Claimant forwarded check-off forms by a letter dated 19th October 2012 pursuant thereto and requested a meeting on 26th October 2012.
3. That the respondent declined to meet the claimant as requested. The Claimant reported a dispute to the Minister per **Section 62** of the LRA.
4. That a conciliator was appointed and convened a meeting on 22nd March 2013. At the meeting the representative of the Employer requested for time to allow the Managing Director to attend the conciliation meeting on 19th April 2013.

On 19th April 2013, the Managing Director did not appear. The conciliator's period had expired, and therefore the conciliator issued a certificate of unresolved dispute in terms of **Section 69** of LRA 2007.

5. Claimant states that it recruited 52 unionsable employees out of 52 unionsable employees constituting 100% membership.

These employees have statutory and constitutional right to join a union of choice and participate in Collective Bargaining.

That the check-off forms submitted are authentic and the Respondent is obliged to deduct union dues from them.

The members presently are remitting their union dues directly per appendix IX.

6. The Respondent has unlawfully terminated employment of some of the employees to defeat attainment of simple majority. Five employees terminated are named herein.

7. The Claimant is the rightful union and the only issue is attainment of the simple majority.

The Application is opposed by the Respondent.

8. The Respondent submits that the certificate of unresolved dispute was issued prematurely, while the Managing Director of the Respondent was out of the country.

The Respondent has in its written submissions expressed interest to resolve the recognition dispute out of Court.

9. The Respondent submits that it be given time to settle the matter out of Court.

The issue in dispute is whether or not as at 31st October 2012, the Claimant had achieved a simple majority of all the unionsable employees at the work place to warrant recognition.

10. This entails examination of the check-off forms submitted to establish if;

- a. they are genuine;
- b. the persons named therein were in the employment of the Respondent at the material time;
- c. they constitute a simple majority of all the unionsable members.

11. The Respondent submits further that it was in the process of establishing from its employees whether indeed they had become members of the union and signed the check-off forms.

The Respondent alleges that many of the employees had denied such membership and has listed 5 examples of such employees.

The effect of such denial is that any deduction of union dues would be unlawful.

The Respondent suspects forgery of the check-off forms.

12. Further, the Respondent submits that many of the alleged members are former casuals of the respondent and therefore were not available to sign the verification list Appendix 4 to the Memorandum of Defence.

The Respondent denies terminating potential and actual members from employment to forestall the union from getting a simple majority.

The Respondent submits that the Claimant had not achieved a simple majority as at 31st October 2012 when the matter was reported to the Ministry of Labour.

13. The Respondent prays the Court to find;

- a. the Claimant did not recruit genuine members to warrant recognition as at 31st October 2012

- b. that the union had not achieved simple majority;
- c. that the check-off forms and the list of employers annexed as Appendix I & II on the Claimant's final submissions are irrelevant to the instant dispute and the same be expunged from the record.
- d. dismiss its Claim as abuse of process with costs.

14. Both parties have filed written submissions. The Court upon a careful consideration of the pleadings, documentary evidence and the submissions by the party has arrived at the following conclusion of facts and law.

15. In **cause No. 104 / 2002**, the Court directed the union to recruit members afresh.

The union has continued to recruit members before and during the pendency of this suit.

The union has recruited 52 members from the employ of the Respondent.

16. The Respondent has continued to resist deduction of union dues and has victimized, via termination of employment, employees that have joined the union.

17. The Court is satisfied that the claimant has satisfied the requirement of **Section 54(1)** of RLA by recruiting more than a simple majority of the unionsable employees of the Respondent.

18. There is no rival union in the Respondent's enterprise and therefore, the Claimant is eligible to represent the employees.

19. In terms of **Section 4(1)** and **(2)** of the LRA as read with **Article 41** of the Constitution of Kenya 2010, the employees of the Respondent have an inalienable right to join a union of choice and to participate in all lawful activities of the union.

20. The union has a right to engage in Collective Bargaining to protect the welfare and interest of all unionsable employees at the Respondent's work place.

21. It is the Court's considered view that the fear and lethargy exhibited by the Respondent in welcoming the participation of the union at the enterprise is ill-founded and the Respondent ought to be disabused of the same.

22. The allegations that the recruits by the union constitute past casuals is but a red herring in this matter and has no basis.

23. The Respondent frustrated the conciliation process and the Court is satisfied that this dispute was ripe for adjudication.

24. In the final analysis, the Court orders as follows;

That the Claimant having attained more than a simple majority of all the unionsable employees of the Respondent be recognized forthwith by the Respondent by signing a recognition Agreement within fourteen (14) days from the date of this judgment.

25. That the Respondent is directed to deduct the union dues in respect of all the employees who have joined the union as at the date of this judgment as evidenced by the check-off forms produced before Court.

26. That Respondent desist from victimizing any of the members of the union and engage the union in constructive Collective Bargaining and other lawful activities at the work place.

The Respondent to pay the costs of the suit.

Dated and Delivered at Nairobi this 13th day of March, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE