



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 482 OF 2014**

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS .....CLAIMANT**

**VERSUS**

**CROWN BEVERAGES LIMITED ..... RESPONDENT**

**Mrs. Nyumba for Claimant**

**M/s Oyombe for Respondent**

**JUDGMENT**

1. The suit was brought vide a Memorandum of Claim dated 20<sup>th</sup> March, 2014 seeking for orders that the Respondent;
  - i. Sign the Model Recognition Agreement in their possession
  - ii. Commence deduction and remittance of union dues immediately and pay the accruing arrears as from December, 2013 to the date of Judgment from their own funds
  - iii. Not to victimize any employee on account of their union membership.

**Facts on which the Claim is based**

2. That the Claimant is a duly registered union and as such it is the appropriate union to recruit and represent members in the Respondent's industry which in the main is a water bottling and beverages company whose main brands are Keringet Pure Natural Mineral Water – still, Keringet Sparking Water – carbonated, Pure Aqua Spring Water, Keringet first, Castle Lager, Castle Milk Stout among others.
3. The company operates within the sector in which the Claimant union operates in terms of the union's constitution, a copy which is attached to the Statement of Claim.
4. The Claimant avers that at the time of membership recruitment by the Claimant in April and May, 2013 the Respondent employed 68 unionisable employees and the union managed to recruit 46 of the said employees.
5. That this forms more than 51% of all unionisable employees of the Respondent and the Respondent is therefore bound under Section 54(1) of the Labour Relations Act, 2007 to recognize the Union for purposes of collective bargaining.

6. That the Claimant submitted to the Respondent fully signed check off forms to effect deduction and remittance of union dues but the Respondent has refused and/or neglected to do so.
7. On 30<sup>th</sup> January, 2014, the Claimant reported a Trade Dispute to the Minister on “Recognition Agreement” in terms of Section 62 of the Labour Relations Act, 2007. The Minister appointed Mr. R. Twanga as a Conciliator.
8. The Claimant thereafter filed this suit on 25<sup>th</sup> March, 2014 before the conciliation was embarked upon and concluded.

## **Response**

9. The Respondent filed grounds of opposition to the claim to wit;
10. The Claimant lacks *Locus Standi* to lodge the application and the Memorandum of Claim herein, in that the suit offends the express and unequivocal provisions of Section 54(1), (6), (7) and (8) of the Labour Relations Act, 2007.
11. That Section 54(1) mandates an employer to recognize a union for the purposes of collective bargaining if that union represents the simple majority of unionisable employees.
12. That the Respondent has 220 employees in its Ruiru, Molo, Nyeri and Mombasa branches. That the Claimant has only recruited 46 employees out of the possible 220 employees.
13. That 46 employees do not constitute a simple majority to warrant the Respondent to grant the union recognition in terms of Section 54(1) aforesaid.
14. Furthermore, Section 56(6) as read together with Sections 54(7) and (8) clearly provide that a dispute as to the “*right of a trade union to be recognized for the purposes of collective bargaining*” may be referred for conciliation and if conciliation fails, then the dispute may be referred to this court under a certificate of urgency.
15. It is the Respondent’s view that it is up to the Respondent to meet the requisite threshold and recognition will be granted.
16. The Respondent is ready and willing to discuss recognition with the Claimant once the threshold has been achieved.
17. The Claimant filed a reply to the grounds of opposition pursuant to leave of Court on 14<sup>th</sup> July, 2014.
18. In the said reply the Claimant Union purports to have recruited 124 unionisable employees out of a possible 228 employees presented in the list of unionisable employees presented by the Respondent as annexure to the grounds of opposition.
19. The Claimant singles out 25 employees out of the list of 228 as belonging to supervisory/management cadre and therefore not unionisable.
20. The Claimant urges the court to uphold its claim with costs.

## **Determination**

21. A party stands or falls on its pleadings. One cannot change the cause of action midstream and expect to get a favourable decision from the court.
22. It is common cause that at the time the Claimant filed this suit, it had only recruited 46 unionisable

employees out a possible 203 employees (228-25) going by the Claimant's version.

23. The Claimant is required to recruit at least 103 unionisable employees to meet the threshold under Section 54(1) of the Labour Relations Act, 2007 going by the aforesaid figures not in dispute.

24. From the Statement of Claim, the Claimant had only recruited 46 employees and no more. The belated attempt to augment its case in the Replying Affidavit by introducing evidence that contradicts in material respects, the Statement of Claim is an exercise in futility.

25. Furthermore, in addition to the provisions of Section 54(6) and (7) of the Labour Relations Act, 2007, which provides for conciliation of recognition dispute before the same is brought to the court, Rule 6(1), (b)(i) & (ii) of the Industrial Court (Procedure) Rules, 2010, mandate a Statement of Claim where a trade dispute has been a subject of conciliation be accompanied by a report by the conciliator or a certificate of unresolved dispute issued under Section 69(9) of the Act.

26. The Claimant reported a dispute but did not pursue the same to its logical conclusion in compliance with the law.

27. For these reasons, the Claim for an order of recognition has no basis and the same is dismissed with costs to the Respondent.

**Dated and Delivered at Nairobi this 21<sup>st</sup> day of August, 2015.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**