REPUBLIC OF KENYA

IN THE IN THE EMPLOYMENT & LABOUR RELATION COURT OF KENYA

AT MOMBASA

CAUSE 444 OF 2014

KENYA SCIENTIFIC RESEARCH

INTERNATIONAL TECHNICAL & ALLIEDINSTITUTIONS WORKERS UNION ….....CLAIMANT

VERSUS

KENYA MARINE & FISHERIESRESEARCH INSTITUTE ….....RESPONDENT

UNION OF NATIONAL RESEARCH & ALLIED INSTITUTES STAFF OF KEN……INTERESTED PART

JUDGMENT

Introduction

1. The Claimant brought this suit on15.11.2010 seeking to revoke the recognition Agreement between the respondent and the third party and to restrain the former from remitting union dues to the latter. The suit further seeks orders to compel the respondent to deduct and remit union dues to the claimant in respect to her members who are employees of the respondent. Finally the claimant prayed for declaration that she is the proper and appropriate union to represent the unionisable staff of the respondent. The basis upon which the suit is brought is that the claimant has recruited a simple majority of the respondent's unionisable staff while the third party has not. That despite the said recognition agreement the third party has not concluded any collective bargaining agreement (CBA).
2. The Respondent has opposed the suit on ground that the claimant has not met threshold for recognition as the appropriate union to represent her unionisable staff. According to the respondent, the claimant has not recruited a simple majority of her 548 unionsable staff in addition to that fact there is a rival union (third party herein) to whom she has already given recognition and are negotiating a CBA. The respondent therefore prayed for the suit to be dismissed because the claimant was only interfering in an area where there is already another union.
3. The interested party filed her defence on 4.12.2014 with the leave of the court. According to her the suit is overtaken by events and it is not brought in the interest of the concerned employees because she already has a recognition agreement with the respondent which was signed on 12.2.2009. She also has a CBA registered by this court as RCA No.2 of 2013 and they are in the process of concluding another CBA. She denied that the claimant has recruited a simple majority of the respondents's staff as required under section 54 and 57 of the Labour Relations Act (LRA). She relied on the decision of this court in Cause No.333 of 2011 which expanded the cadre of the

unionized staff in her favour.

4. The suit was disposed of by written submissions filed by the three parties based on the pleadings on record.

Analysis and Determination

4. After carefully perusing and considering the pleadings and the written submissions filed, it is clear that the parties herein were engaged in conciliation of a trade dispute brought under section 62 of the LRA before the Labour office which was not resolved and hence referred hereto after the Conciliator issued a certificate of disagreement on 15.10.2010. There is also dispute that this is a dispute concerning the status quo on 15.11.2010 when the suit was filed and not the current position.
5. There is no dispute that even before the claimant started recruiting members from the respondent, the interested party had already received recognition from the respondent and were negotiating CBA which was later registered and they are currently concluding another one. There is also no dispute that the respondent and the claimant are enjoying cordial relationship and that union dues are being remitted regularly. The issues for determination are:

a. Whether the claimant and not interested party is the proper and appropriate union to represent the respondent's unionisable staff.
b. Whether the recognition agreement between the respondent and the interested party should be revoked and remittance of union dues to the latter stopped.
c. Whether the respondent should remit any union dues to the claimant in respect of her recruited members.

The proper and appropriate union.

5. Under paragraph 2,9,10,11 and 12 of the claim filed on 15.11.2010, the claimant pleaded that she recruited 253 members from unionisable staff of the respondent and forwarded original check-off forms dully signed by the said members. However the respondent refused to remit union dues and to recognize the claimant as the proper union to represent her unionisable staff because she already had recognized another union.
6. On the other hand the Respondent denied that the claimant had recruited a simple majority of her unionisable staff and pleaded under paragraph 4 of her defence that her unionsable workforce was 548. She contended that only the interested party had recruited a simple majority and had since 12.2.2009 been accorded recognition to represent the unionisable staff. In conclusion the respondents contended that the existence of a recognition agreement between her and a rival union bars her from according recognition to the claimant.
7. On the part of the interested party the claimant never recruited simple majority because the number was even higher than what the respondent had classified as unionisable cadre. According to her, she successfully sued the respondent in cause No.333 of 2011 and had some cadre of staff previously classified as management being declared unionisable.
8. From the foregoing arguments and the pleadings it is clear that as at the time this suit was brought the claimant had not recruited a simple majority of the respondent's unionisable staff. Even without considering the extra staff that were declared unionisable by the court in cause No.333 of 2011, the 253 members pleaded by the claimant did not constitute 50% of the 548 unionisable workforce. She therefore never met the threshold for the grant recognition by the employer as the union to represent her unionisable staff for purposes of collect bargaining.
9. Section 54(1) of the LRA provides that:

> ***"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 employee."***

The foregoing provision of the law is clear that, a trade union that does not recruit a simple majority does not qualify for any recognition by the employer for purposes of collective

bargaining. In this case the claimant was therefore not the proper and appropriate union to represent the respondent's unionisable workforce as at the time when the suit was filed. Facts may have changed since then but that is not relevant now because the dispute before the court is not about current status among the disputants.

Revocation of recognition agreement and stoppage of remittances

10. In view of the foregoing findings that the claimant never qualified for recognition as at the time of filing this suit, she has no basis to insist that the recognition agreement in favour of the interested party be revoked. In addition the evidence by the respondent that the interested party had recruited a simple majority before recognition in February 2009 was not rebutted or challenged by the claimant. Consequently the court declines to revoke the said agreement. The court will also not stop the deduction and remittance of union dues or any other lawful remittances to the interested party because they are based on the law.

Remittance of union dues to the claimant.

11. Section 48 (1) of the LRA entitles a trade union to apply in the prescribed form for an order from the minister in charge of labour directing an employer of more than 5 employees belonging to the union to deduct and remit union dues from the wages of the its members and remit to a specified account belonging to the union and the federation of trade unions. Section 48(3)of the LRA states that:

> "***an employer in respect of whom the minister has issued an order under subsection (2)shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the third schedule signed by the employees in respect of whom the employer is required to make deduction."***

12. The court is satisfied that the claimant has recruited more that 5 unionsable employee from the respondent and is therefore entitled to a remittance of union dues if she proves that she has properly applied for and obtained an order from the labour minister. In this case the claimant has not produced a copy of the minister's order given under section 48(2) of the LRA. For avoidance of doubt however, if the unionized employees will insist of paying union dues to the claimant, they will risk double deductions because they shall be charged agency fees in respect of any CBA concluded between the respondent and the interested party.

Disposition

13. In view of the reasons and findings stated above, the suit is dismissed with costs and interests.

Signed, dated and delivered in Mombasa this 21st day of September 2015

Onesmus Makau

Judge