



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 120 OF 2015

KENYA ENGINEERING WORKERS'

UNION LIMITEDCLAIMANT

VERSUS

FINE ENGINEERING WORKS LIMITED RESPONDENT

(Before Hon. Lady Justice Hellen S. Wasilwa on 14th October, 2015)

JUDGMENT OF THE COURT

1. The Claimant herein filed their Memorandum of Claim on 2/2/2015. They also filed with the Memorandum, an application brought under Certificate of Urgency under Section 74 of the Labour Relations Act. The urgency is necessitated by provisions of Section 74 of the Labour Relations Act which provides that such a claim be brought under Certificate of Urgency.
2. The Claimant Applicant contends that the Respondent herein has refused to sign a recognition agreement with them hence this claim.
3. The Claimant avers that they are a trade union registered under the Trade Disputes Act Cap 233 (now repealed) by the Labour Relations Act 2007. The Respondent on the other hand is a company registered under the Company's Act based at Industrial Area in Nairobi. The Claimant avers that the functions of the Respondent are covered by the Claimant's Union's Constitution and that the Claimant are the rightful union to represent the interest of unionisable employees in the company. That there is no other rival union claiming to represent the interests of unionisable employees in the company.
4. It is the Claimants' case that the dispute between them arose in on the 25th July 2014 when the Applicant Union submitted check off system forms duly signed by 91 unionisable employees authorizing the Respondent to deduct union dues from their monthly salaries and to remit to the union at the end of each month as per Section 48 of the Labour Relations Act 2007.
5. The Claimant avers that on the 28th of October 2014, they submitted another check off list duly signed by 18 unionisable employees and then on 9th October 2014, another list of 8 unionisable employees was also presented. The lists have been submitted as Claimants Appendix 1A and 1B.
6. The Claimant also informed court that on 25th July 2014, they also submitted a Recognition Agreement to the Respondent's Managing Director to study before parties could meet again on

- 7/8/2014 (Appendix 2). It is the Claimants' case that at the shop-level, the parties did not sign a recognition Agreement as required by Section 54 of the Labour Relations Act 2007. They made the Claimants to report the existence of a trade dispute under Section 62 of the Labour Relations Act 2007 to the Cabinet Secretary, Ministry of Labour, Social Security and Services (Appendix 3).
7. This dispute was accepted by the Cabinet Secretary on 1/10/2014 and a Conciliator appointed in accordance with Section 55 of the Labour Relations Act – (Appendix 4). The Conciliator convened a joint meeting between the parties on 22/10/2014 at 11 am (Appendix 5). It is the Claimant's case that in this meeting, the Respondent openly told the Claimants that they were not going to sign a recognition agreement with the Claimant union. The Claimant thus resorted to bring this dispute to court.
 8. The Claimants avers that they have recruited a total of 117 unionisable employees of the union out of a total of 141 employees which is over 50% as required by Section 54 of Labour Relations Act. The Claimant therefore submits that the Respondent therefore has no genuine reason to refuse the Claimants' quest for recognition.
 9. The Claimants prayer to this court therefore is for court to order the Respondent to immediately sign a recognition agreement with the union and also pay costs of this suit.
 10. The Respondents filed their response to this claim on 1/7/2015 through the firm of Messrs Okenyo Omwansa & Company Advocates.
 11. They aver that the Claimants never submitted to them any recognition agreement for consideration nor did the Respondent even claim they were going to sign any such agreement. The Respondents further state that the check off forms submitted to them was laced with forgeries of signatures.
 12. The Respondents aver that in respect to the said forgeries, they engaged the services of a handwriting and documents experts to ascertain the validity of the same, who they stated in their pleadings would testify of in this court, and the Respondents attached certain documents (FEWL-2) being daily attendance sheets. They also aver that certain of those who had signed the check off system have recanted and retracted their membership to the Claimant as per Appendix FEWL-3.
 13. The Respondents further aver that there is also double registration of some of those who had signed the check off forms as per their FEWL-4. The Respondents further aver that majority of its employees contracts have expired at their work place and as such fresh check off lists should be drawn.
 14. Having considered the submissions of both parties, the issue for consideration is whether the Claimant has recruited the requisite number of members to warrant recognition.
 15. In answering this question, the evidence of the Claimant and from check off forms submitted, they have recruited more than 50% of the unionisable employees. This is as per the provisions of Section 54 of the Labour Relations Act.
 16. The Respondents on their end submit that the figure submitted by the Claimants are false in that some of the alleged members who had signed check off forms have denounced them and some have abandoned the union while yet others are no longer their employees.
 17. On this evidence of Respondent, they had averred that they would produce evidence of a handwriting expert to prove the forgeries. This expert was never called as a witness or in his absence, his report. The allegation of forgery therefore remains a mere allegation.
 18. On the withdrawal of members from the union, the Respondent produced a list of letters allegedly written by the said members who are 31 in number. The Claimant had submitted they had

recruited a total of 117 members against 141 employees – less the 31, the remainders are 86 out of the 141, which makes over 60% and therefore above the simple majority of the unionisable members.

19.The respondents had been invited to a reconciliation meeting by the conciliator and they adamantly refused to negotiate. Their evidence now that some members are no longer in their employment is what should have been presented before the Conciliator.

20.It is this Court's finding that the Claimant has recruited the requisite number of members to warrant recognition and I do order that the Respondent do recognize them forthwith and enter negotiations within 60 days with a view of negotiating Collective Bargaining Agreement as provided for under Section 54 of Labour Relations Act.

Read in open Court this 14th day of October, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Okenyo Omwansa for Respondent

No appearance for Claimants - Absent