



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT AT KISUMU**

**CAUSE NO. 316 OF 2013**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA HOTELS AND ALLIED WORKERS UNION.....CLAIMANT**

**VERSUS**

**LAUGHING BUDHA CAFE & LOUNGE .....RESPONDENT**

**J U D G E M E N T**

The issue in dispute in this case is the refusal of the Respondent to deduct Union dues and to sign recognition agreement with the Claimants. In the Memorandum of Claim filed on 12th November, 2013 the Claimant avers that it was registered under Trade Union Act (replaced by the Labour Relation Act) on 3rd November, 1999 to represent employees in the hospitality industry. It recruited all 14 unionisable employees of the Respondent, a cafe and lounge operating hotel business based in New Nyanza between December, 2010 and September 2011. The Claimant served check off forms on the Respondent to effect deduction of Union dues from December, 2011. It also sent a recognition agreement to the Respondent to sign but the Respondent declined to do both.

The Claimant reported a dispute to the Minister for Labour who appointed Joel Omweno of Kisumu Labour office as Conciliator. The Conciliator convened several meetings at which the Respondent promised to sign recognition agreement but failed to do so, prompting the Conciliator to issue a Certificate of Disagreement so that the dispute could be referred to this court for final determination.

The Claimant averred that it has complied with Sections 48, 54, 62, 69(a) and 73(1) of the Labour Relations Act, that it is the relevant union to represent unionisable employees of the Respondent, has recruited 100% of the eligible employees and there is no other union contending membership of the employees. It prayed that the Respondent be ordered to sign a recognition agreement within a specified period and to deduct and remit union dues forthwith. The Claimant further prayed that the Respondent be ordered to pay the Claimant an equivalent of Shs.2,100 per month being union dues from December, 2011 to date of judgement for deliberate refusal to deduct union dues in disobedience of the law. The Claimant further prayed for costs and any other orders the Honourable Court may deem fit to grant.

The Respondent instructed the firm of Otieno, Ragot & Company Advocates who filed a notice of appointment under protest on 7th February, 2014 but did not file any defence to the Memorandum of Claim.

The case came up for hearing severally when the Respondent was served with hearing notice but failed to attend court. On 24th September, 2015 after ascertaining that the Respondent was duly served with hearing notice and an affidavit of service had been filed, I allowed the Claimant to

proceed with the hearing of the case in the absence of the Respondent.

Mr. John Simiyu for the Claimant relied on the documents filed in court and reiterated the contents of the Memorandum of Claim. He submitted that the Claimant served the check off form with the list of all the employees together with recognition agreement on 2nd December 2011 and requested for a meeting for signing the recognition agreement but the Respondent declined. He further submitted that after appointment of the Conciliator meetings were held at the Labour Office which the Respondent attended and promised to sign the recognition agreement but again failed to do so. Mr. Simiyu drew the courts attention to the check off form, the Certificate of Disagreement and the recognition agreement annexed to the Memorandum of Claim and also to the Claimant's bundle of documents filed in court on 27th July, 2015 pursuant to directions of the court of 22nd July, 2015. Mr. Simiyu urged the court to grant orders as prayed.

I have considered the pleadings filed by the Claimant together with the documents attached thereto and those filed on 27th July, 2015.

The issue for determination is whether the Claimant has recruited a simple majority to qualify for recognition and whether it is entitled to the orders sought.

Section 48(3) of the Labour Relations Act requires an employer on which Form S has been served to commence deduction within 30 days of Union dues from employees who have signed the form and remit to the Union's account specified in the form - Form S is the check off form. Section 50 makes it an offence to fail to comply with Section 48(3).

Section 54(1) requires an employer to sign a recognition agreement with a Union which has recruited a simple majority of unionisable employees.

From the check off forms attached to the Memorandum of Claim, the Claimant has recruited 14 employees whom it avers is 100% of the unionisable employees. The Respondent has not contested this fact.

I am satisfied that the Claimant has recruited a simple majority of unionisable employees of the Respondent and based on evidence before make the following orders:-

1. The Respondent is directed to immediately commence deduction of Union dues from the salary of the employees whose names appear on the check off form and remit to the Union designated Account with effect from 1st December, 2015.
2. The Respondent is directed to sign recognition agreement with the Union within 30 days
3. The Respondent shall pay claimant's costs of this dispute in the sum of Shs.50,000/=.

**Dated, signed and delivered in the open court this 20th day of November, 2015.**

**MAUREEN ONYANGO**

**JUDGE.**