



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 930 OF 2015**

**KENYA UNION OF PRINTING, PUBLISHING, PAPER MANUFACTURERS, PULP AND  
PACKAGING INDUSTRIES.....CLAIMANT**

**VERSUS**

**AFRICA POLYSACK LIMITED.....RESPONDENT**

**RULING**

1. The applicant/union seeks orders of this Court directed to the respondent compelling them among others to sign a formal recognition agreement to pave way for negotiating a Collective Bargaining Agreement. The Union further seeks that the Court orders the respondent to effect the check-off system in accordance with section 48 of the Labour Relations Act. The application was supported by the affidavit of One Rajabu W. Mwondi who stated that he was the Secretary General of the applicant union. He deponed in the main that: -

- a. That on diverse dates between April and July 2014 the Claimant did recruit 112 unionisable employees out of (missing)
- b. That check-off forms plus a copy of recognition were forwarded to the respondents to effect the union deductions as envisaged in the Labour Relations Act, 2007.
- c. That these recruited employees comprise of over 90% of the unionisable employees, hence far above the required 51% under the provision of the Labour Relations Act, 2007 Laws of Kenya.
- d. That the claimant attended the meeting met with the Human Resource Manager and Operations Manager who after introduction requested to have the meeting postponed to 15<sup>th</sup> July 2007 at 11.00 a.m. in their offices.
- e. That the claimant met the respondent representatives on 15<sup>th</sup> July 2015 but instead of the meeting taking place they said they must get the right legal advice from FKE and promised to come back to the claimant in two weeks which never happened prompting the claimant to report a Trade Dispute to the Cabinet Secretary, Ministry of Labour Social Security Services through a letter dated 18<sup>th</sup> September 2014.
- f. That the Chief Industrial Relations Officer vide a letter dated 21<sup>st</sup> October 2014 appointed Mr. R.O.A. Litaba to act as a conciliator.

- g. That in the meeting the respondent denied that the employees in the check off forms were his employees, others had revoked their union membership and twenty three (23) were no longer working with him. The conciliator asked the respondent the total labour force which he indicated to be between one hundred and twenty (120) and one hundred and thirty six (136) including the management. The respondent could not tell who have left and who was still working with him and therefore requested for more time to go and identify them. This was granted by the conciliator.
- h. That the respondent took this time to disorganize the members by intimidating them forcing them to revoke their union membership. Letter of revocation were given to the conciliator on 25<sup>th</sup> February 2015 in the second meeting but no copy was given to the claimant.
- i. That the respondent raised issues about the numbers in the list just to disapprove the claimants numbers claiming that the claimant has not recruited the simple majority as required by the law. He gave a different number of total labour force as between 140 and 150. The claimant produced a revised check off forms of 64 employees dated 15<sup>th</sup> December 2014 out of 84 who are in the respondent employment as at 31<sup>st</sup> December, 2014. The claimant has the list of all employees of the respondent as at 31<sup>st</sup> December 2014.
- j. That the conciliator declined to receive the true copies of the respondent employees and gave his recommendation relying on the information given by the respondent.

2. On 17<sup>th</sup> June, 2015 when the matter came up before me, I granted the respondent leave to file and serve a replying affidavit within 30 days and directed that the matter be mentioned on 27<sup>th</sup> July, 2015 for directions on the ruling date. However, when the matter came up on 27<sup>th</sup> July, 2015 as directed the respondent had not filed the replying affidavit as directed by the Court prompting me to direct that I would review the application in absence of the replying affidavit and make a ruling on 30<sup>th</sup> October, 2015.

3. On 18<sup>th</sup> August, 2015, Mr. Ouma for the respondent filed an application dated 12<sup>th</sup> August, 2015 seeking orders on the main that the Court reviews its orders made on 27<sup>th</sup> July 2015 on proceeding to deliver a ruling on the claimant's application without the input of the applicant and that the Court extends time within which the respondent is to respond to the application whose ruling was slated for 30<sup>th</sup> October, 2015. In the alternative Counsel sought that the Replying Affidavit and Memorandum of Response attached to his application be deemed filed within time.

4. When the application was placed before me on 5<sup>th</sup> October, 2015, I directed that I would consider the application together with the one slated for ruling on 30<sup>th</sup> October, 2015. Concerning the application by Mr. Ouma dated 12<sup>th</sup> August, 2015, I have reviewed the same and consider it merited and hereby allow it to the extent that the replying affidavit and memorandum of response are deemed to be filed within time. I will however proceed to consider the application dated 28<sup>th</sup> May, 2013 by the claimant Union without benefit of submissions by both parties as directed on 27<sup>th</sup> July, 2015.

5. This being an interlocutory application, the Court will consider whether the orders sought are merited and capable of being granted pending the hearing and determination of the main claim. As pointed out earlier, the applicant union seeks orders that the respondent do sign a recognition agreement to pave way for negotiating a Collective Bargaining Agreement on behalf of the Union's members employed by the respondent. The applicant further seeks that the Court orders the respondent to effect the check-off system in accordance with section 48 of the Labour Relations Act. These are the selfsame prayers in the main claim. Apart from the prayer concerning unfair termination and threat to workers on account of union membership which the Court granted at interlocutory stage, the above two prayers are substantive prayers which can only be granted after a full trial on merit.

6. The Court has perused the application, the affidavit in support as well as the respondents replying affidavit and noted that there is a dispute whether the applicant union has attained a simple majority to earn them recognition as provided under section 54(1) of the Labour Relations Act. The matter was subjected to conciliation by the Ministry of Labour who became of the view that the claimant Union had not met the threshold prescribed by section 54(1) of the Labour Relations Act. That is to say, the Union did not have the requisite simple majority to earn it recognition by the respondent. The applicant contests the findings of the conciliation. In the circumstances the Court declines to grant the orders sought in the application dated 28<sup>th</sup> May, 2015 and directs that the claim proceeds to trial on merit.

7. This ruling will apply to cause number 931 of 2015 between the claimant Union and Styroplast Limited since the issues and facts are similar.

8. It is so ordered.

Dated at Nairobi this 13<sup>th</sup> day of November 2015

Abuodha J. N.

Judge

Delivered this 13<sup>th</sup> day of November 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge