



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 2563 OF 2012

(Before D.K.N. Marete)

BANKING, INSURANCE & FINANCE UNION (KENYA).....CLAIMANT

Versus

UTIMO SACCO SOCIETY LTD.....RESPONDENT

JUDGEMENT

By a memorandum of claim dated 20th December, 2012 this claim was brought to court. The issue in dispute is therein cited as;

‘Recognition agreement and non-remittance of union dues’

The respondent vide a memorandum of defence dated the 21st March, 2013 opposes the claim and prays that the same be dismissed with costs.

The claimant’s case is that he is a registered trade union under the Labour Relations Act, 2007 and represents employees in banks, insurances, saccos, financial institutions *et al* and the entire financial sector whereas the respondent is a sacco.

The claimant posits that he has registered eighteen (18) members of the respondent’s employees and served two sets of check offs to the respondent to deduct and effect union dues as of course. The staff have also, through the claimant elected their representatives on 12th March, 2013.

On 13th March, 2013, the claimant forwarded draft recognition agreements to the respondents and also proposed a meeting but this was refused. Thereafter the parties met on 4th April, 2012 but disagreed. This was the same even after the claimants reporting of a trade dispute and appointment of a conciliator. The respondent therefore continues to delay the signing of a recognition agreement and remission of union dues.

The claimants pray as follows;

- i. *That we have recruited majority of the unionisable employees eligible by virtue of the union’s constitution and served the employer.*
- ii. *That there is no rival union claiming representation or recognition.*
- iii. *That we are the sole and appropriate union to represent the employees of the Sacco as it is their (employees’) constitutional right to join a trade union of their own choice.*

The respondent denies the claim and submits that despite being registered as a savings & credit society, their core business is in public transport and the sacco aspect was merely a response to the regulations of the Ministry of Transport which regulates the operations of the respondent. He denies refusal to meet the claimant and avers that at the meeting of 4th April, 2013, he clarified that the correct union is the Transport & Allied Workers Union and not the claimant.

The respondent further puts in a case for the Transport & Allied Workers Union and avers that he is at an advanced stage in a recognition agreement with the union. The suit is therefore premature and should be dismissed. He also intends to raise a preliminary objection to the suit for being fatally defective and bad in law.

When the matter finally came for hearing on 2nd December, 2013, the parties agreed to dispose of the matter by way of written submissions with a mention on 30th January, 2014 for confirmation of compliance and other directions of court.

In his written submissions, the claimant reiterates his case as expressed in his claim. He further submits that he has fully complied with the law and interactions/conversions on the subject and therefore prays that a finding be made in his favour in this course. He also seeks to rely on the authorities of;

- a. ***Cause No. 6 of 1997: Kenya Quarry and Mine Workers Union versus Artstone Ltd at page 4/5 of the award***
- b. *Kenya Building, Construction, Timber, Furniture and Allied Employees union versus Sat Jointers Ltd at page 6 and 7 of the award.*
- c. *Kenya Hotels and Allied Workers Union versus Nairobi Serena Hotel at page 7 of the award.*

The respondent's submission comprise S.4(8) Labour Relations Act, 2007 on the issue of applicable section of representation and therefore reiterates that representation by the claimant in this section is misplaced. He also submits as follows – contradiction of the claim;

- i. *The claimant claims to have recruited 18 unionisable staff employed by the respondent, yet they have not exhibited any membership forms, list of members, card, application forms or otherwise in support of the allegations.*
- ii. *There is nothing on record by the claimant to show that the alleged recruited members have acknowledged membership and revoked membership of other unions.*
- iii. *The Claimant claims that the said recruited members have been paying, their respective union due in cash yet it has not attached any receipt or list showing, when each of the alleged members paid or how much was paid and where it was paid.*
- iv. *The claimant claims that a certain meeting was held, in the respondent's office on 12th March 2012, yet there are no minutes in support of the same, showing the time, the agenda and or any resolution made in the said meeting.*
- v. *Its alleged that on the said date elections were held yet from the exhibits attached (APP 1 A&B) its clearly that the so called shop stewards election form is incomplete, it does not show its origin., the position held by the alleged stewards and his deputy in the "bank" and their respective year of service.*

Indeed one wonders if at all there was any meeting and or elections as alleged why was there no, secretary, assistant secretary, treasurer youth representative and women representative yet the form clearly shows the said positions were to be filled.

Its respondent submission that no such meeting was ever held in its premises, no formal

recruitment was ever made.

vi. In **APP.1A** which is a letter by the claimant dated 13th March 2012 he claimant purport to forward a set of check-off Order and from the said letter and the annexure thereon we urge and invite your lordship to note the following..

The letter fails to indicate the total numbers of members recruited in the institution.

*That despite the claimant's allegations of having recruited 18 members only one by the name of **Mohammed Okello** appear to have signed the said form, the said member is not even in the list of that member who attended the meeting of 12th march 2012, yet from the said form he appears to have signed on the day of the meeting, **where is the truth?** And why did all those who attended the alleged meeting fail to execute the said form.*

vii. *The claimant alleges that the matter was referred to a conciliator who issued a certificate of dispute, we however note without prejudice, that save for the certificate, there is no report, by the said conciliator, its therefore not possible for this court to know from an independent point, whether there was any recruitment at all of the respondents employees, how many members were recruited, how many were unionisable and any recommendation on whether to recognize the union or not.*

viii. *That from the inconsistencies in evidence by the claimant as alluded to above, lack of evidence as to how many members were recruited, how many were unionisable and in absence of the conciliators report and findings, the claimant cannot be said to have met the simple majority rule to warrant any recognition by the respondent.*

The respondent further submits that the suit is fatally defective and bad in law in that it is against a non existent entity the respondent being registered as Umoja Tena Inner Core Sacco Limited, thus invalidating the suit.

The issues for determination therefore are;

1. What is the position of the suit vis-à-vis the preliminary objection raised by the respondent?
2. Is the claimant the right union to represent the employees of the respondent?
3. Is the claimant entitled to the relief sought?
4. Who meets the costs of this claim?

The 1st issue for determination is the position of the suit with regard to the preliminary objection raised by the respondent. The respondent in the last limb of his submissions provides that this claim is fatally defective and bad in law in that the claimant has sued a non-existing entity. The respondent is registered as Umoja Tena Inner Core Sacco Limited which is well known to the claimant and who has not made any attempt to amend the pleadings to reflect the same.

This submission is fallacious in that it is not backed by any evidence and therefore remains a mere allegation. The respondent does not adduce any evidence, documentary or otherwise to demonstrate a case for the entity as registered or even any linkage between the same and the claim as presented. The preliminary objection therefore fails for lack of particulars and linkage to the claim as presented.

The 2nd issue for determination is whether the claimant is the appropriate union to represent the employees of the respondent. Both parties have contradictory opinions on this and therefore the necessity for evidence to this extent. The correct practice would have been for the respondent to adduce evidence of lack of legitimacy in dealing with the affairs of the employees by the claimant. He who assents must prove. He does not. Instead, the respondent only comes in to rubbish the claimants claim to legitimacy and points out to the presence of another appropriate union for her employees. I hold that it is not the respondent's duty to suggest, opine or even recommend the appropriate union for the employees. This is a matter dictated by the law. The claimant has come up with evidence to support his claim to legitimacy.

She had adduced documentation on recruitment, correspondence with the respondent and even election of shop steward and leadership. The claimant therefore comes out as the appropriate union to represent the respondent's employees in the meantime.

The 3rd issue for determination is whether the claimant is entitled to the relief sought. Issue No. 2 above has been determined in favour of the claimant. The claimant is therefore entitled to the relief sought. The respondent also does not get out of this way to make a concrete defence of the claim. The claimant therefore carries the day and takes all relief as sought.

The 4th issue for determination is as to who bears the costs of this cause. Costs follows the cause. The costs of this application shall therefore be borne by the respondent.

I therefore find for the claimant and allow the claim. I order relief and declare as follows;

1. THAT the claimant has recruited a majority of the unionisable employees of the respondent.
2. THAT the claimant is entitled to represent of the respondent's unionisable employees.
3. THAT the respondent be and is hereby ordered to forthwith sign a recognition agreement and effects union deductions and remittances in favour of the claimant union.

Delivered, dated and signed this 28th day of March 2013.

D.K. Njagi Marete

JUDGE

Appearances:

1. Mr. Isaiah Munoru for the claimant.
2. Mr. Mwangi instructed by Mwangi Wambugu & Co. Advocates for the respondent.