



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 847 Of 2010

BETWEEN

TRANSPORT AND ALLIED WORKERS UNION.....
CLAIMANT

VERSUS

UNIVERSAL CABS LIMITED
RESPONDENT

Rika J

CC. Leah Muthaka

Mr. Nasib Makuwa, Industrial Relations Officer, for the Claimant Union

Mr. Mutahi instructed by K.Macharia & Company Advocates for the Respondent

ISSUES IN DISPUTE: RECOGNITION AGREEMENT

AWARD

1. The Claimant Union initiated the proceedings under Section 74 [a] of the Labour Relations Act 2007. The Statement of Claim and an Application for provisional measures were received in Court on 27th July 2010. The Respondent filed its Statement of Response on 22nd September 2010. The Claimant called one Witness James Mwaura who testified on 1st July 2013, when the Claimant’s case closed, while the Respondent called its Director Joseph Kibindo Munene on this date, bringing the hearing to a close.
2. The Claimant states it is a registered Trade Union, representing the Unionisable Workers in the Transport and Allied Industries. The Respondent operates taxis, and has its Head Office at Westlands in Nairobi. The Respondent’s business falls within the Claimant’s area of representation.
3. The Claimant recruited 50 out of the 70 Unionisable Employees of the Respondent in the year 2010, and forwarded the Check-Off Lists to the Respondent. The Forms were forwarded in a letter dated 30th June 2010. On 15th July 2010, the Claimant forwarded to the Respondent the Model Recognition Agreement, and proposed to meet the Respondent at its Offices on 29th July 2010, with a view to signing the Recognition Agreement. The Respondent did not act on the Check-Off Lists or the Model Recognition Agreement.

4. After the Claimant submitted the Check-Off Lists, the Respondent terminated the employment of 12 Employees. Without the benefit of trade union representation, the Employees are subjected to various infractions in their terms and conditions of employment which include: delay in payment of their monthly wages; working excessive hours without overtime pay; and are not allowed to go on annual leave or paid in lieu of leave. Consequent upon the Employees enlisting with the Claimant Union, the Respondent went on to harass, intimidate and threaten the Employees, demanding they recant their Membership. Employees were victimized, locked out and had their wages set at different scales depending on their union status, and mockingly told to go to the Union if they had grievances.

5. The Claimant prays for orders that the Respondent:-

- a. Recognizes the Claimant Union as provided for under Section 54 of the Labour Relations Act;
- b. Implements the Check-Off Forms in accordance with Sections 48 and 50 of the Labour Relations Act;
- c. Is restrained from harassing, intimidating and threatening the Employees;
- d. Is compelled to pay the Employees whose contracts have been terminated their terminal benefits; and
- e. Enters into a Collective Bargaining Agreement with the Claimant harmonizing the Employees' terms and conditions of employment.

6. James Mwaura stated he was one of the Employees whose contracts were terminated by the Respondent for joining the Claimant Union. Employees had various grievances. They worked long hours without rest, or compensation. They mobilized and joined the Claimant Union in big numbers. The Director Mr. Munene received the Check-Off Lists from the Claimant Union. He summoned every Employee who had enlisted, one after the other, and grilled them. They were told if they needed to continue working, they would have to leave the Claimant Union, or sign new contracts. They would work for 12 hours a day, and earn Kshs. 10,000 per month. The Witness was sacked for refusing to quit the Union.

7. Cross-examined, the Witness stated he was employed around December 2008. He produced his testimonials at recruitment. He was one of the Employees who mobilized the others. The others knew what they were doing when they enlisted. The Trade Union Official came to the workplace before the Employees signed the Forms. Mwaura was aware some of the Employees wrote letters resigning from the Union. He was sacked in July 2010. The Director told him to go and work for the Union. The Employees worked in different shifts.

8. The Respondent's position is that it did not have a problem with its Employees belonging to the Claimant Union; the only problem was that membership had in certain cases been procured through coercion, fraud and physical violence. Following this, Members revoked their membership. They wrote to the Respondent and instructed the Respondent not to deduct union dues from their pay.

9. The Respondent acknowledged receipt of the Check-Off Lists, but could not act on them in view of the express instructions of the Employees not to deduct trade union dues from their pay. The Recognition Agreement would not be signed, in light of the Employees' withdrawal of their membership. No Employee was dismissed on account of belonging to the Claimant. Employees were paid on time; worked over the prescribed hours and were paid overtime for any excess hours worked; and enjoyed their leave as laid down in the law. Employees have never been threatened or in any way harassed by the Respondent. Some of the signatures in the Check-Off Lists were forged, and some of the Employees whose names were on the Lists, did not work for the Respondent.

10. The Director Joseph Kibicho Munene explained that his company is involved in taxi business. The Respondent was approached by an insurance company, and asked to have the Respondent's Drivers' Licenses authenticated. A majority of them, about 90% complied, while those who did not were not retained. The Respondent was not aware of trade union activities taking place at the workplace. The Claimant forwarded Check-Off Lists, demanding that the Respondent deducts trade union dues. Munene called a Drivers' meeting. They refused to have money deducted from their monthly pay. Munene

organized a meeting between the Drivers and the Union Officials. At the meeting, the Employees denied they had joined the Claimant Union. He said he is willing to engage with the Claimant Union, but on clearly established terms of engagement; there must be proper evidence of membership. The case of termination should not be joined to the claim for recognition. The Respondent has 180 Employees none of whom is a member of the Claimant Union.

11. Answering questions from Mr. Makuwa, the Witness testified that there must be an acceptable way in which Employees are recruited. The Claimant could not go to the workplace at night and threaten Employees into joining the Trade Union. The Respondent received about 55 names in the Check-Off Lists. The letters of resignation from the Claimant Union were written by the concerned Employees themselves. Drivers were required to produce their Licenses regularly. Munene testified he declined to act on the Check-Off Lists for a good reason. The Respondent urges the Court to dismiss the Claim.

The Court Finds and Awards-:

12. The prayer to pay terminal dues and compensation to Employees, whose contracts were terminated, should be pursued in a separate claim for unfair and unlawful termination. It is not proper to join the issue of recognition, trade union dues and termination in one claim. The evidence becomes muddled, and the law stretched, by presentation of an omnibus Claim. It is difficult to assess the evidence on termination of the 12 Employee' contracts of employment and reach an informed decision, in the same proceedings where evidence on recognition is to be recorded, evaluated and a decision rendered. The Court agrees with the Respondent's Witness that the Claimant should have split the two Claims and pursued them separately. It is also difficult for the Employer to justify termination while at the same time, is expected to fully answer to the Claim for Recognition. There were circumstances pertaining to each termination case, which should be enquired into more carefully within the context of the termination law, a task that may not be possible where the question of multiple terminations is mingled with that of Recognition. ***The Court defers the issue of termination of the 12 Employees' contracts of employment, and directs that the Claimant shall pursue a separate Claim for termination if still minded to do so.***

13. This should leave the Court with the questions of Recognition and Trade Union Dues. The Claimant states in some of its pleadings that it recruited 55 out of 70 Unionisable Employees, and in other documents indicates to have recruited 50 out of 70 Unionisable Employees. The Respondent states it has a total of 180 Employees. None is a Member of the Union.

14. There are as many as 50 Employees who are shown to have written letters to the Claimant Union in the month of August 2010, withdrawing their Membership. This was a month after the Check-Off Lists were forwarded to the Respondent.

15. There is evidence to question whether the Employees voluntarily forfeited their Membership. Allegations of intimidation and threats of the Employees by the Employer appear credible, particularly considering around the same time the Check-Off Lists were submitted, no less than 12 Employees lost Employment in unclear circumstances.

16. Section 54 of the Labour Relations Act 2007 requires an Employer to recognize a Trade Union which has recruited a simple majority of the Employer's Unionisable Employees. In this dispute the total number of the Unionisable Employees is not clear, neither is the number of such Employees, who validly remains Members. The Respondent may be blamed for this, for even as Mr. Munene strenuously reassures that he is ready to engage with the Trade Union, the events of June-August 2010 suggest strongly that there were measures taken by the Respondent to bust the Claimant Union. In such a situation, a Claim for Recognition should not be rejected or accepted outright. The Court should consider the right of the Employees to associate freely, and respect their free will, whose expression, from the evidence on record has been lost in a tussle between the Claimant Union and the Respondent Employer. It is in the interest of the Parties that the Employees are allowed to exercise their free will, in associating or dissociating with the Claimant Union.

17. In light of this, the Court Orders:-

[a] The Respondent shall supply the Claimant Union with a full list of its Unionisable Employees within 7 days of this Award;

[b] The Claimant Union shall have 30 days from the date the list of Unionisable Employees is supplied to the Claimant by the Respondent, to recruit afresh;

[c] The Respondent shall ensure no Employee is in any way hampered in making the choice to join or not join the Claimant Union, and ensure Union Officials are facilitated in accessing the workplace;

(d) An order for injunction is hereby granted, restraining the Respondent by itself, its servants and/or agents, from harassing, intimidating, victimizing and/or otherwise threatening the Unionisable Employees on account of their association with the Claimant, or on account of any other trade union activity.

[e] Severe sanctions shall be imposed by this Court on any Party found to have interfered with the Employees' right and freedom of association;

[f] The Parties shall move the Court at the close of 37 days for further orders.

Dated and delivered at Nairobi this 3rd day of March 2014

James Rika

Judge