



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI

INDUSTRIAL CAUSE NO. 59 OF 2013

KENYA UNION OF COMMERCIAL, FOOD

AND ALLIED WORKERS.....CLAIMANT

VERSUS

JATOMY ENTERPRISES LTD.RESPONDENT

RULING

1. The applicant by a notice of motion dated 4th June, 2013 seeks orders of this court directed to the respondent to commence deductions and remit to the applicant, dues of employees who have already joined the Union pending the determination of the dispute.
2. The respondent through a replying affidavit sworn by Jackson Kibunyi Wainanina does not refuse to deduct the Union dues as well as accord the applicant recognition. The respondent however argues that they did not receive the check off forms allegedly sent to them by the applicant. According to the respondent the matter has been brought to court prematurely as the procedure provided under section 54 of the Labour Relations Act had not been followed and or exhausted.
3. According to the respondent, it had no intention of stopping any worker from joining a Union of their choice and denied any engagement in unfair labour practice.
4. On 25th July, 2013 when the parties appeared before me, and it emerged that the respondent did not oppose the desires by the applicant, I directed that the parties relook at the dispute in the light of Labour Relations Act and report to court on 25th September, 2013. On this day, I further directed that the parties attempt to resolve the dispute before the appointed conciliator – Mr. Kiruki and report to court within 30 days for directions.
5. Whereas the report was never formally tabled before the court as directed on 11th December, 2013, the applicant filed a further memorandum of claim in which the minutes of the meeting with the conciliator were attached. This further memorandum of claim was filed without leave of court and no response thereto has been filed by the respondent.
6. The conciliator upon hearing the parties recommended that all unionizable employees who are agreeable to paying union dues should have the deductions effected using the copy of the check off list filed in court. The conciliator further recommended that the applicant continues to recruit and attain 51% mark.
7. At the meeting with other conciliator the Muster roll was produced and with regard to Chuka, 19 signed and 9 were found invalid. As for Embu, 30 signed, 40 signatures were found invalid and

- 10 had already left work. Thus the total number of qualified members were 49 out of 114 which translated to 43% less than the mandatory 51%. These minutes were signed by Mr. Kiruki as the conciliator, Mr. Owiyo for the applicant union and Mr. Kibunyi for the respondent.
8. At the hearing of the motion, only Mr. Owiyo for the applicant appeared. He submitted that section 54(1) of the LRA requires employers to recognize trade unions that represent simple majority and that the claimant union was the relevant union to the operations of the respondent. He further submitted that section 19(6) of the Employment Act obliges the employer to deduct Trade Union dues and the respondent having failed to do so, he urged the court to order that the respondent makes the payment themselves. He further urged the court to order the respondent to sign a recognition agreement with the Union and conclude a CBA within 90 days.
 9. It would seem to me that the respondent does not resist recruitment and deduction of Union dues from employees so recruited. It further seems that the respondent does not object to entering into a recognition agreement with the applicant Union. Their only objection is that the claimant Union has not furnished them with the check off forms and that they rushed the matter to court before exhausting the provisions of section 48 of the LRA.
 10. Section 54 of the LRA provides that an employer **shall** recognize a Trade Union for purposes of collective bargaining if that Trade Union represents the simple majority of unionizable employees. Subsection 3 of the same section further provides that an employer or group of employers and a Trade Union shall conclude a written recognition agreement recording the terms upon which the employer recognises a Trade Union.
 11. The import of the foregoing provisions of the law is that an employer has no option but to recognize a Trade Union once such Union has shown that it represents a simple majority of unionizable employees in its establishment. The recognition must also be reduced into a written agreement setting out the extent to which such employer recognises a Union.
 12. In the matter before me the respondent has not resisted the recognition of the applicant all it is saying, is that applicant has not fully complied with the provisions of section 48 of the LRA. There is also the minutes of the conciliation meeting dated 13/11/2012 signed by the conciliator and disputant's representatives. From the minutes the court has noted that it is not clear that the applicant had attained simple majority as some of the signatories to the check off sheets were invalid when compared to the muster roll.
 13. In the circumstances the court hereby orders that the respondent commences deductions of Union dues forthwith from those unionizable employees who have been verified to have voluntarily signed the check off sheets and further that the respondent in accordance with the provisions of section 56(1) and 56(2) permits the applicant to access its premises for purposes of recruiting union members. The court further directs that a recognition agreement be entered into within 60 days of attainment of simple majority as stipulated under section 54(1) of the LRA.

14. It is so ordered.

Dated at Nyeri this 23rd day of May, 2014.

ABUODHA N. J

JUDGE

Delivered in open Court in the presence of Mr. Richard Muunda

Advocate for the Claimant and in the presence of Mr. Baru

Advocate for the Respondent.

ABUODHA N. J

JUDGE