

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 389 OF 2013

AMALGAMATED UNION OF KENYA METAL WORKS.....CLAIMANT

=VERSUS=

JAY KAY MECHANICAL LIMITED.....RESPONDENT

R U L I N G

The matter for consideration is the respondent's Preliminary Objection (P.O.) seeking to strike out the suit or in alternative the suit be stayed pending consolidation. The Preliminary Objection was to be disposed of by written submissions but the respondent did not file any. The court is of the view that the Preliminary Objection was therefore not prosecuted. Nevertheless the court has the following to say.

The suit before the court concerns failure by the respondent (employer) to accord recognition to the Claimant (trade union). Claimant alleges that she recruited the respondent's employees as union members and forwarded check off forms requesting for deduction and remittance of union dues. The respondent has however denied service of such check off forms. The other dispute to determine in the said suit is whether the respondent should accord the Claimant recognition under Section 54 of the Labour Relations Act (LRA).

The court has perused the Memorandum of Claim and reply by the respondent. It is noticeable that the dispute was first reported to the Minister for Labour who appointed a conciliation under Section 65 of the LRA on 15th May 2013. That the conciliation summoned the parties for hearing but the respondent failed to attend. In the meanwhile the Respondent allegedly started to victimize the grievants in this dispute forcing the Claimants to prefer this suit although no certificate was issued by the conciliation that the dispute was not resolved.

There is no difficulties in finding and holding that the suit is properly before the court. Section 73 of the LRA allows parties to refer a trade dispute to this court if it was not resolved after conciliation. Under Section 69 of the said Act, a trade dispute is deemed to be unresolved after conciliation if, the conciliation issues a certificate stating so or, if 30 days period from the appointment of the conciliator, or any longer period agreed to by the parties, expires.

In this case the conciliator was appointed on 15.5.2013 and the suit was filed on 15.11.2013. That was over 30 days after the appointment of the conciliator and no evidence was adduced by the respondent to prove that the statutory period was extended by an agreement of the parties. The court therefore finds that the dispute was unresolved within the meaning of Section 69(b) of the LRA and as such the Claimant was entitled to file this suit.

For all the reasons and finding aforestated the Preliminary Objection is dismissed. Costs in the cause.

Dated, Signed and delivered this 25th July 2014.

O.N. MAKAU

JUDGE