



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 389 OF 2013

AMALGAMATED UNION OF KENYA METAL WORKSCLAIMANT

VERSUS

MS JAYKAY MECHANICAL LIMITEDRESPONDENT

J U D G M E N T

INTRODUCTION

1. The Suit herein seeks for orders to compel the respondent to accord the Claimant recognition and deduct and remit Union dues in respect of her staff who are members of the Claimant. The basis of the Suit is that the Claimant has recruited 22 of the respondent's 30 unionisable staff.
2. The Respondent has denied knowledge of claimant's recruitment of the respondent's staff as no check off forms were ever served on her. In the meantime the respondent avers that if any members were recruited they did not make a simple majority and have since withdrawn from the union. Lastly, the respondent has raised a preliminary objection to the Suit saying that it was filed before completion of pre- industrial statutory mechanism.
3. Before the Suit was heard the parties recorded consent to the effect that the respondent was to commence deduction and remittance of Union dues of the existing members of the claimant. The parties further consented that the respondent be restrained from victimizing or terminating the services of the the claimant's members on account of their union affiliation or activities. The Suit was heard by way of written submissions. The claimant filed submissions but the respondent did not.

CLAIMANTS' CASE

4. The claimant has contended that her suit is properly before the court because it complies with section 69 and 74 of the Labour Relations Act (LRA) and rule 6(2) of the Industrial court (Procedure) Rules (ICPR).
5. On the other hand, the Claimant has submitted that after recruiting the respondent's unionisable staff, she served notice and check off forms on the respondent as per appendix 2 in the Memorandum of claim. According to the Claimant, the respondent acknowledged service by stamping on the said Appendix 2. In addition, the claimant has submitted that the fact that some members wrote letters resigning from the union is evidence that the respondent had been served with the check off forms.
6. Lastly the claimant has argued that she has met the 3 conditions for the grant of Recognition

namely, that she is the most relevant and appropriate union in the industry; there is no rival union recognized by the respondent; and that she has recruited 22 out of 27 unionisable employees of the respondent which represents 88% of the target group. According to the claimant, even if 5 of the members have since resigned from the Union, the remaining 17 out of members recruited represents 67% which is way above the statutorily required simple majority.

ANALYSIS AND DETERMINATION

7. Upon careful perusal of the pleadings and submissions, the court has noted that the respondent has not denied that she employed 30 unionisable staff as at the time of filing this suit. She has also not denied that the claimant recruited 22 of the said 30 unionisable employees. She has also not denied that the claimant is the most appropriate union in the industry and that she has not recognized any other union as the representative of her unionisable staff. It is also not in dispute the suit was filed before the conciliation proceedings were concluded.
8. The issues for determination are whether the Suit is prematurely brought and whether the Claimant has met the conditions necessary for the grant of orders sought.

PREMATURE SUIT

9. The court is not in any doubt that under section 69(b) and 74 of the LRA, the Suit is properly before the court. Under Section 69(b) of the LRA, a trade Dispute is deemed unresolved if after thirty days period from the appointment of the conciliator or any longer period agreed to by the parties, expires before conciliation is completed. In present case it is clear from Appendix 4 in the memorandum of claim that the conciliator was appointed on 15.5.2013. It is also clear from the court record that this Suit was filed on 15.11.2013, about 6 months after the appointment of the conciliator. Consequently, the court is satisfied that the pre-industrial process had become complete and the dispute had matured for filing in court under section 74 LRA.

CONDITION FOR GRANT OF RECOGNITION

10. Under Section 54 of the LRA, an employer is required in mandatory terms, to recognize a trade union for purpose of collective bargaining if the trade union represents the simple majority of the unionisable employees. In the present case, as earlier observed, there is no dispute that the claimant recruited 22 out of 30 unionisable employees of the respondent. The said members definitely represented 73.3% of the unionisable staff. As per Appendix JK6 (for the defence), 4 of the members resigned before the Suit was filed on 15.11.2014 leaving 18 members out of the 30 unionisable staff which represents 60% which is more than the simple majority required under section 54 of the LRA. Considering the claimant's constitution produced as appendix 1 in the memorandum of claim, the court is with no doubt that claimant is the appropriate union to represent the unionisable workers in the respondent's industry. Consequently the court finds that the claimant has met the threshold for the grant of the orders sought.

DISPOSITION

11. From the reasons aforesaid, judgment is entered for the claimant in the following terms:-

- a) The respondent is directed to forthwith sign a Recognition Agreement in favour of the claimants.
- b) The respondent is directed to comply with section 48 of the LRA by deducting and remitting union dues to the claimant through the claimant's Gazetted bank Account.
- c) The respondent is restrained from victimizing, coercing and/or terminating the services of the claimant's members on ground of the union affiliation or lawful activities.
- d) Each party shall bear her own costs.

Orders accordingly.

Dated, signed and delivered this 7th November 2014.

O. N. Makau

Judge