



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 61 of 2012

KENYA PLANTATION & AGRICULTURAL WORKERS UNION.....CLAIMANT

VERSUS

HEDGE FARM LIMITED.....RESPONDENT

JUDGEMENT

The claimant is duly registered Trade Union with the meaning of the Labour Relations Act 2007 (LRA).

On 31.5.2012, she filed a claim against the Respondent citing refusal by the respondent to sign Recognition Agreement and the refusal to deduct and remit Trade Union dues in favour of the claimant.

She prays for the following reliefs against the respondent:-

- (a) Injunction to restrain the respondent from dismissing, coercing, victimizing, intimidating or in any other manner interfering with the rights of her employees who are members of the claimants for failing to revoke their membership with the union.
- (b) Order to compel the respondent to comply with section 48 of the LRA by deducting and remitting union dues and depositing them in the claimant's account gazetted by the Labour Minister.
- (c) Order to compel the respondent to sign the proposed Recognition Agreement within a short time in order to allow room for negotiation of a Collective Bargaining Agreement (CBA).
- (d) Costs.

The respondent was duly served with the claim and appointed counsel to represent her in the proceedings. I am satisfied that the respondent was granted leave severally to file defence but regrettably neglected to do so.

The hearing date was fixed by the consent of all the parties in the open when leave to file defence extended by 14 days from 14.12.2012. The opportunity was however squandered and Mr. Nduna and Okeche for the respondent did not give any plausible explanation for the default when they attended hearing on 7.2.2013.

The claim proceeded by way of oral submission mainly expounding on the memorandum of claim filed.

M/s Muunde who appeared for the claimant submitted that respondent operates business in the sector in which the claimant is registered to represent unionisable workers. She referred the court to the claimant's constitution. That on or about 18.1.2011, the claimant recruited all the 19 employees of the respondent as her members and forwarded check-off form to the respondent.

That the respondent refused to comply with the requirements for deductions or remittance of union dues and thereby breached section 48 and 50 of the LRA.

That on 2.12.2011 she again forwarded a proposed Recognition Agreement but the respondent refused to sign. Instead, she has resorted to intimidating the employees and has already dismissed eleven of the employees leaving only eight members of the claimant.

That the respondent has employed three new workers and out-sourced three security guards. That despite the said developments in the establishment, the claimant has over 72% recruitment excluding the out-sourced guards and therefore qualified to be accorded recognition under section 54 of LRA.

That so far the eight employees are fully paid up members of the claimant through direct payment of subscriptions under section 52 of the LRA.

I have carefully considered the arguments advanced by the claimant and exhibits annexed to the claim. I am also alive to the fact that the respondent has not filed any defence to the claim and therefore the claim stands un-controverted.

I am satisfied that by dint of section 4 of the Industrial Court Act and articles 162(a) of the constitution, I have jurisdiction to determine disputes related to employment and industrial relations like the present case.

The issues for determination is whether the claimant has satisfied the requirements of section 54(1) of the LRA by recruiting a simple majority of the respondents unionisable employees.

I am satisfied in view of exhibit HF2 that the claimant recruited more than a simple majority of the respondents unionisable staff. It is also not in doubt that the constitution of the claimant mandates her to recruit members within the section in which the respondent operates. I have also considered the proposed Recognition Agreement annexed as exhibit HF3 which in my view is in harmony with section 56 of the LRA.

I need not repeat that the respondent has not challenged the claimant's pleadings and evidence. I therefore believe the claimant's case that the respondent has deliberately refused to comply with the law and has instead resorted to intimidating her employees and even gone to the extend of dismissing them for exercising their constitutional rights of joining Trade Union.

It follows therefore that the prayers sought in the Claim are granted in the following terms;

1. The respondent is restrained from intimidating and/or dismissing or in any other manner interfering with the rights of her employees who are members of the Claimant for the reasons of becoming members of the claimant union.
2. The respondent is ordered to sign a Recognition Agreement with the claimant within 30 days of this judgment.
3. The respondent is ordered to commence deduction of union dues for the 8 employees who are members of the claimant and remit it promptly to the claimant's account gazetted by the Minister for Labour.

The claimant will also have costs of this suit.

Orders accordingly.

Signed, Dated and Delivered on the 22nd day of February 2013.

Onesmus N. Makau
JUDGE