



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 126 of 2012

KENYA LONG DISTANCE TRUCK DRIVERS AND ALLIED WORKERSCLAIMANT

VERSUS

METREX LIMITEDRESPONDENT

JUDGMENT

The Claimant has sued the respondent seeking the following orders:

- a) An order to deduct and remit union dues from the grievants who are claimants members.
- b) An order to grant recognition Agreement to the Claimant to represent the grievants.
- c) Declaration that the claimants had fulfilled all the provisions for according to Recognition Agreement.
- d) Unconditional reinstatement without loss of benefit of all members of the Claimant who were either victimized and suspended and the respondent be restrained from intimidating the Claimant's members.
- e) Costs and any other relief which the court deems fit.

The claim has been opposed by the Respondent on grounds that the claimant has not fulfilled all statutory requirements for grant of recognition, in particular section 48 and 54 of the Labour Relations Act.

After several adjournments, the matter was heard exparte on 11.4.2013 when Mr. Nicholas Ndungu Mbugua testified for the claimant as CW1. The summary of his evidence is that he is the general Secretary for the Claimant. That on 10.10.2010 the Claimant recruited 156 out of 250 unionisable employee of the Respondent which represents 62.4%.

That on 31.1.2011 he wrote to Respondent notifying her about the recruitment and forwarded Check Off Forms the respective recruited staff members. That the respondent did not honour the request on 10.2.11, the CW1 forwarded a draft Recognition Agreement to the Respondent but she declined to sign.

That he then reported the dispute to the Labour minister who appointed a conciliator which did not secure any agreement.

That on 11.7.2011, the Claimant recruited 73 more members raising the numbers to 299 out 250 unionisable staff which represents 91.6%

According to him the claimant has complied with all the legal requirements for grant of recognition. The he did seek ministerial order for deduction and remittance of dues because the Check off forms had clear instructions at the rear side. He denied the allegation by the defence that the Respondent had 585 members.

He also denied that some recruited union members were appearing twice on the Check Off Forms. He concluded by accusing the respondent of victimizing the Union members and prayed that she be stopped.

I have carefully perused the pleadings and the evidence adduced by the claimant. I have no doubt that the court's jurisdiction over the matter is unchallenged. The issues for determination are:-

1. whether the claimant has fulfilled all the legal requirements to warrant recognition by the respondent for purposes of Collective Bargaining under the LRA?
2. Whether the reliefs sought ought to be granted?

The answer to the first lies in section 54 of the LRA. The section provides that an employer shall accord the said recognition if the Trade Union represents a simple majority of the unionisable employees.

In the present case the claimant has alleged that the respondent had only 250 unionisable workers as at the time of recruitment and hearing. The respondent however filed a list of 585 members of staff. The respondent also filed a list of 25 of the 229 recruits who disowned the union. That reduced the representation to 204. that the respondent also gave a list of 36 members who allegedly appeared twice on the Check off Forms. That reduced the figure further to 168. Assuming that the double registration was not true, the figure remained below a simple majority at 204 out of 585.

Before the close of the hearing, the court asked the claimant whether it was in order to call for employment records from the Respondent but the claimant objected and closed her case.

From the forgoing, the Court was left without evidence to verify whether indeed the claimant had recruited a simple majority of the Respondent's unionisable staff. Accordingly the court is not satisfied that legal handle set by section 54 of the LRA was met.

As regard the deduction and remittance of union dues, the claimant has not proved that he complied with Section 48 of the LRA. The said section provides that an employer shall commence deductions and remittance of trade union dues after service of an order from the Minister. That ministerial order is sought by a Trade Union in the prescribed form. In the present case CW1 admitted on oath that he did not apply for the Ministerial order but relied on the instructions at the back of the Check off forms. I do not need to belabour the point. The Claimant has not complied with Section 48 and 54 of LRA to warrant the recognition for purposes of collective bargaining.

Consequently I decline to grant the reliefs sought and dismiss the suit. This judgment does not however muzzle the Claimant's endeavour to represent her members. She is free to do so within the threshold of the relevant law.

I make no orders as to costs.

Signed, Dated and Delivered on the 10th May 2013.

ONESMUS N. MAKAU

JUDGE