



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**  
**CAUSE NO. 61 OF 2013**  
**(Originally Nairobi Cause No. 245 of 2013)**

**KENYA LONG DISTANCE TRUCK DRIVERS**  
**& ALLIED WORKERS UNION**  
**CLAIMANT**

v

**Ms KYOGA HAULIERS LTD**

**RESPONDENT**

**JUDGMENT**

1. Kenya Long Distance Truck Drivers & Allied Workers Union (the Union) filed a Memorandum of Claim on 22 February 2013 against Ms. Kyoga Hauliers Ltd and the issues in dispute were stated as
  - i. Refusal/failure by the Respondent to deduct and remit union dues from the respective salaries/wages of the union members and remitting the same to the union
  - ii. Refusal/failure by the Respondent to sign a recognition agreement with the claimants
  - iii. Victimizing, intimidating, threatening and/or inciting the workers against the union.
2. Together with the Memorandum of Claim was a Notice of Motion, which the Union informed me during the hearing on 27 May 2013 that it was abandoning.
3. The file was initially placed before Lady Justice Onyango in Nairobi on 22 February 2013 and she granted prayer (a) of the motion and directed service of the application and set *inter partes* hearing for 7 March 2013.
4. On 7 March 2013 the file went before Lady Justice Onyango again and the Union informed her that the application had not been served and that the Cause was a Mombasa cause. The Judge ordered the file to be transferred to Mombasa. She further directed the Union to serve the pleadings.
5. On 2 April 2013 the file was placed before me and only the Union was represented. I directed the Union to serve the Respondent with a mention notice and fixed a date of 23 April 2013. On 23 April 2013 the Respondent did not appear and Mr. Okemwa for the Union informed me that an affidavit of service had been filed. The record bears out that an affidavit of service was filed on 23 April 2013 confirming service upon the Respondent. The Respondent had accepted service but refused to acknowledge the service by signing a copy thereof.
6. I fixed the Cause for hearing on 27 May 2013 and directed the Union to serve a hearing notice. On the hearing day, only the Union was represented and I was informed that an affidavit of service had been filed. A perusal of the record confirmed that an affidavit of service was filed on 27 May 2013. The case therefore proceeded *ex parte* because the Respondent had failed to file a Response

within the stipulated time or appear during the hearing.

## **Union's case**

7. The Union called one witness Nicholas Ndungu Mbugua, its Secretary General. The witness testified that the Union was registered in 2007 and that between December 2010 and August 2011 it recruited 213 out of the 347 unionisable employees of the Respondent. After the recruitment the Union sent the check-off forms with the names, identity card numbers and signatures of the employees to the Respondent through letters dated 26 March 2011 and 28 March 2011 requesting it to deduct and remit their union dues to the union account (Annexure 3). The Respondent, according to the witness, refused.
8. As a result of the refusal, the witness continued, he made a report of a trade dispute to the Minister of Labour through letter dated 29 March 2011. The dispute went through conciliation as required by the Labour Relations Act and on 29 May 2012 the Conciliator released a report (Annexure 1). The conciliation report noted that although the Respondent had been served with the check-off forms, it had refused to effect the deductions but embarked on victimizing employees who had joined the union.
9. The report also noted that the union had recruited 61.38% of the Respondent's employees and that the union was the proper union to represent the interests of the employees of the Respondent. There was no rival union. Because the conciliation had gone beyond the time stipulated in the Labour Relations Act, the Conciliator advised that the trade dispute be referred to this Court. For the purposes of the court action the Conciliator and the Union signed their portions of the Certificate of Agreement indicating the disagreement (Annexure 4). The Respondent did not append its signature to the Certificate.
10. The witness also produced a copy of Gazette Notice No. 9371 of 12 October 2007 in which the Minister for Labour had ordered all employers employing more than 5 members of the union to deduct monthly union dues and remit the same to the union's account.

## **Evaluation**

### ***Refusal/failure to deduct and remit union dues***

11. The deduction and remitting of union dues from employees who have acknowledged union membership is based on the Minister for Labour making an appropriate order. It does not require a recognition agreement between a union and an employer. The Minister had made an appropriate order on 12 October 2007 through Gazette Notice No. 9371.
12. Further the Union had submitted to the Respondent the names and identity card numbers of the employees through the check-off forms. There is absolutely no legal reason why the Respondent would refuse to deduct and remit the union dues.
13. The Union has satisfied me that it deserves an order directing the Respondent to deduct and remit the union dues to the account named in the Gazette Notice.

### ***Refusal/failure to sign a recognition agreement***

14. To be entitled to a recognition agreement, a union needs to establish that it has complied with section 54 of the Labour Relations Act, in that it represents more than a simple majority of the unionisable employees of the employer.
15. The evidence presented before me was that the Union had recruited 213 out of 347 of the unionisable employees of the Respondent. This translated to 61.38%. This testimony is supported by the check-off forms and the report of the Conciliator. The Conciliator's report further noted that there was no rival union and that the union was the relevant union for employees of the Respondent.
16. Considering the testimony and documentation placed before me, I am satisfied that the Union has complied with the requirements of section 54 of the Labour Relations Act and is thus entitled to recognition by the Respondent.

## ***Victimisation, intimidation of workers***

17. The witness for the Union testified that the Respondent was harassing its members whose names had been submitted to it through the check-off forms. The Conciliator's report also noted that the Respondent had embarked on a scheme to reduce union membership and that some six employees had been dismissed on the basis of their union membership.
18. Victimization because of union membership is a grave matter which strikes at the heart of the constitutional right to freedom of association, right to organize and participate in the activities of a union. It is an unfair labour practice. If it is established that an employer has been involved in unfair labour practices, the consequences could be dire. There could be criminal sanctions or even constitutional damages.
19. Unfortunately the Union did not place before me any further details such as the names of the employees who had been harassed or intimidated because of union membership.

### **Conclusion and orders**

20. Considering the foregoing, it is my finding that the Union has established that it is entitled to an order directing the Respondent to deduct and remit union dues in respect of those employees who have acknowledged union membership and recognition by the Respondent.
21. I therefore do order that
  - a. The Respondent do forthwith commence deducting and remitting to the Union dues from those employees who have acknowledged union membership into account no. 033-020-018-855 at K-Rep Bank, Kenyatta Avenue Branch
  - b. The Respondent do grant the Union recognition by signing a recognition agreement within the next 30 days.
22. There will be no order as to costs.

**Delivered, dated and signed in open Court in Mombasa on this 28<sup>th</sup> day of June 2013.**

**Justice Radido Stephen**

**Judge**

**Appearances**

Mr. Kimani instructed by

F.N. Kimani & Associates for the Union

No appearance for Respondent