



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 625 OF 2013

**KENYA UNION OF ENTERTAINMENT AND
MUSIC INDUSTRY EMPLOYEES.....CLAIMANT/APPLICANT**
VS
SPORTS STADIA MANAGEMENT BOARD.....RESPONDENT

RULING

Introduction

1. On 6th May 2013, the Claimant/Applicant filed a Memorandum of Claimant together with a Notice of Motion under Certificate of Urgency seeking orders that the Respondent be compelled to sign a Collective Bargaining Agreement (CBA) for the period 2011/2013.

2. The Notice of Motion was supported by the affidavit of Mucuha Job Wainaina, the Claimant/Applicant's Secretary General. Mr Mucuha deponed that the parties had agreed on all outstanding issues in the CBA but the Respondent had declined to sign the said CBA.

3. When the matter came before me on 7th May 2013, I certified it urgent and directed the Claimant to serve the Respondent. The Respondent filed a Replying Affidavit on 29th May 2013 and the matter was heard *inter partes* on 31st May 2013.

The Claimant's Submissions

4. Mr. Mucuha submitted that the parties had a Recognition Agreement in place and had concluded a Collective Bargaining Agreement (CBA) before a conciliator but the Respondent had declined to sign it. The CBA was due to expire in September 2013.

5. Mr. Mucuha further submitted that pursuant to a Ministerial Order, the Claimant was entitled to agency fees.

The Respondent's Submissions

6. Mr. Mwaniki for the Respondent told the Court that the errors in the Replying Affidavit, which were inadvertent, did not affect the core of the Respondent's response. He submitted that 61 of the Respondent's employees had resigned from the Claimant Union, thus undermining the simple majority status of the Union. The Respondent had written to the Union on this development. Counsel further submitted that the issue of recognition had also been canvassed in Cause No 1390 of 2011.

Ruling by the Court

7. The main issue for determination in this application has to do with recognition of the Claimant Union for purposes of collective bargaining with the Respondent.

8. Section 54(1) of the Labour Relations Act, 2007 provides that:

An employer, including an employer in the public sector shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

9. The Respondent submitted that 61 of its employees had resigned from the Claimant Union and that consequently, the Union no longer represented a simple majority of the Respondent's unionisable employees. The Respondent attached the resignation letters to the Replying Affidavit sworn by Gabriel Komora on 28th May 2013. The Respondent also produced its letter dated 29th July 2011 notifying the Claimant Union of the resignations.

10. The Claimant did not controvert the Respondent's assertion in this regard and did not render any evidence as to the number of the Respondent's unionisable employees who were still its members. The Court had occasion to peruse the ruling in Cause Number 1390 of 2011 between the same parties and found that the issue of recognition of the Claimant was dealt with conclusively.

11. There is no evidence that the Claimant's status in terms of number of members from the Respondent's unionisable establishment has changed. I therefore find no basis on which the Respondent could be directed to sign the CBA.

12. In its submissions, the Claimant also sought to stake a claim for agency fees as per Ministerial Order dated 26th July 2011. Agency fees is premised on the fact that unionisable employees who are not members of a trade union are benefiting from a CBA negotiated by the trade union. Agency fees therefore hangs on an existing CBA. It cannot be levied where there is no CBA as in the current case. In the circumstances the claim for agency fees also fails.

In the final analysis, the Claimant's application is dismissed with no order for costs.

DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF JUNE 2013

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JUDGE

In the Presence of:

.....**Claimant**

.....*Respondent*