



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 377 OF 2013
KENYA NATIONAL PRIVATE SECURITY WORKERS
UNION.....CLAIMANT
VS
LAVINGTON SECURITY
LIMITED.....RESPONDENT

RULING

Background

1. On 21st March 2013, the Claimant filed a Memorandum of Claim in which it sued the Respondent for failure to pay several benefits to Aftin Deron Hassan, the grievant herein.
2. The Respondent filed a Statement of Defence on 23rd April 2013 in which it raised a preliminary objection to the Claimant's claim on the ground that the Claimant has no *locus standi* to sue on behalf of the grievant since there is neither a Recognition Agreement nor a Collective Bargaining Agreement between the Claimant and the Respondent. The Respondent further filed a Notice of Motion on 23rd May 2013 raising the same preliminary objection. The Preliminary Objection was heard on 24th May 2013.

The Respondent's Submissions

3. Miss Sang for the Respondent submitted that there was no Recognition Agreement between the Claimant and the Respondent in terms of Section 54 of the Labour Relations Act, 2007. In particular, the Claimant had not recruited a simple majority of the Respondent's employees as its members. In fact, there was no evidence that the grievant himself was a member of the Claimant Union. Consequently there was also no Collective Bargaining Agreement and the Claimant therefore had no capacity to represent the grievant. Counsel told the Court that there was a separate dispute on recognition pending before the Court.

The Claimant's Reply

4. In reply, Miss Onyancha for the Claimant referred the Court to Article 41 of the

Constitution which provides for fair labour practices, including the right for an employee to join and participate in the activities of a trade union. Counsel submitted that the existence of this right was irrespective of the mode of joining the trade union.

5. Miss Onyancha further submitted that Section 4 of the Labour Relations Act confers a right to employees to join a trade union while Section 5 outlaws discrimination on the basis of union membership.

6. On the question of whether the grievant was a member of the Claimant Union, Counsel referred the Court to a letter dated 5th January 2012 written by the Claimant's Branch Secretary-Nairobi County to the Respondent's Human Resource Manager on the grievant's benefits. There was therefore a legal relationship between the Claimant Union and the grievant.

7. It was the Claimant's position that the Respondent had no legal ground for claiming that the Claimant had no *locus standi* in this case since the Union was duly registered and recognised as the legitimate union for the sector in which the Respondent operates. Counsel for the Claimant therefore asked that the Preliminary Objection be rejected.

Ruling by the Court

8. The Preliminary Objection taken by the Respondent is grounded on the fact that there is neither a Recognition Agreement nor a Collective Bargaining Agreement between the Claimant and the Respondent and that consequently the Claimant has no *locus standi* to represent the grievant.

9. This Court has pronounced itself on this issue in the case of **Transport and Allied Workers Union Vs DHL Global Forwarding (K) Limited (Industrial Court Cause No 745 of 2010)** as follows:

“The Labour Relations Act and the Industrial Court (Procedure) Rules confer a special jurisdiction on Trade Unions in industrial litigation where a Trade Union may sue in its own name on behalf of its members who are aggrieved by the action of their employer.

While recognition allows Trade Unions to negotiate a Collective Bargaining Agreement, it is not a prerequisite to union representation. The right to representation is conferred by membership which itself is a right under Article 41 of the Constitution of Kenya, 2010.”

10. I see no reason to depart from this position. The notion that the absence of recognition vitiates the employee's right of representation has no place in our time as it flies right in the face of the express provisions of the Constitution. In view of the foregoing, it is my finding that the Respondent's Preliminary Objection is not well taken and is hereby rejected.

The Respondent will pay the costs of this application.

DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF JUNE 2013

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JUDGE

In the Presence of:

.....**Claimant**

.....*Respondent*