



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO.1448 OF 2012**

KENYA UNION OF COMMERCIAL FOOD AND  
ALLIED WORKERS.....CLAIMANT

**-VERSUS-**

CAPITAL FISH KENYA LIMITED .....RESPONDENT

**AWARD**

By a Memorandum of Claim dated 17<sup>th</sup> August 2012 the Claimant Union filed this dispute against the Respondent **CAPITAL FISH KENYA LIMITED**. The issue in dispute is Failure to sign Recognition Agreement.

**The Claimant Union prays for the following orders:-**

- i. **THAT** the Respondent be ordered to sign the model Recognition Agreement now in their possession without any further delay.
- ii. **THAT** the Respondent deducts and remits Union dues from all members as directed by the members themselves through signed check-off forms.
- iii. **THAT** the employees who acknowledged their membership with the Claimant Union will enjoy this right without any form of intimidation or victimization.
- iv. **THAT** cost of this claim be provided for.

The Respondent filed its Response to the Memorandum on 18<sup>th</sup> September 2012 and filed a Supplementary Response on 22<sup>nd</sup> November 2012. The Respondent denies that the Claimant is entitled to recognition.

The case was heard on 12<sup>th</sup> March 2013 when the Claimant Union was represented by **MR. JOHN OWIYO** while the Respondent was represented by **MR. NG'ANG'A**.

Mr. Owiyo submitted that the case is brought pursuant to Article 36 and 41 of the Constitution, Section 4 and 12 of Industrial Court Act and Sections 4, 48 and 54 of the Labour Relations Act. He submitted that the Union has a right to represent the employees of the Respondent and there is no other union claiming representation of the workers. That between December 2011 and January 2012 the Claimant Union recruited into its membership 60 of a possible 80 unionisable employees of the Respondent, translating to 75% of unionisable employees. Consequently the Claimant notified the Respondent and forwarded the check-off forms together with the Model Recognition Agreement for their study and possible signature.

He submitted that at Paragraph 2 of the Respondents Memorandum of Response the Respondent has admitted that it is involved in the business of collection of fish products for local and export market.

He prayed that the Respondent be ordered to sign the recognition Agreement without further ado. He further prayed that the Respondent be ordered to deduct and remit union dues as per check-off forms already served upon them. Lastly he prayed for orders that employees who have acknowledged their membership should enjoy their rights without any form of intimidation or victimization by the Respondent.

Mr. Ng'ang'a for the Respondent submitted that for the union to succeed it must demonstrate that it has met the minimum threshold of simple majority. That the Claimant has failed on that test. He submitted that the Respondent has submitted a spreadsheet as at October 2012 with details of payroll number, name of employee and the NSSF number showing 20 employees in Homabay and 20 in Nairobi. As at 2012 the number of employees was 143. At the time of filing response the number was 138 with 115 in Homabay and 23 in Nairobi. He submitted that these facts have not been controverted by the Claimant. He admitted that the Claimant had recruited 36 employees. That out of 36, 2 have left employment and 34 are still in employment and are in the check-off forms submitted to the Respondent by the Claimant. He further submitted that another 3 employees in the Claimant's list left employment in 2012. He further submitted that the Claimant's list has names of 17 casual workers who are no longer in the employment of the Respondent by virtue of the nature of their employment. He submitted that out of the 143 employees in the payroll only 34 are in the union list. He submitted that the Claimant has not achieved a simple majority to qualify for recognition.

Mr. Ng'ang'a further submitted that the Respondent does not contest that the Claimant is the right union or that there is no rival union. The only contest is on simple majority. He urged the Court to dismiss the claim.

In a brief reply, Mr. Owiyo pointed out that the list supplied by the Respondent did not identify which of the employees were unionisable and which ones were not, that the list does not show who are casuals.

I have considered the Memorandum filed by both the Claimant and the Respondent, the annexures thereto and their oral submissions.

The law relating to recognition is set out in Section 54 of the Labour Relations Act. A union must demonstrate that it is authorized by its constitution to represent the employees in the undertaking or occupation in which the employees are engaged, that it has recruited a simple majority of unionisable employees of the Respondent and that there is no other union claiming to represent the employees. The last qualifying factor is not in the Act but is presumed as a union cannot be granted recognition if there is another union claiming the right to represent the same employees. In such a situation the Court would first have to resolve the issue of which union is the right union before determining if that right union qualifies for recognition.

In the present case the Respondent has admitted that the Claimant is the right union and that there is no other union claiming the right to represent its employees.

The only issue for determination is therefore whether the Claimant has recruited a simple majority to qualify for recognition.

According to the payroll produced by the Respondent, they had 138 employees in November 2012. Out of these they allege that the Claimant had only recruited 36 employees. The Claimant on the other hand submitted that it had recruited 60 employees out of 80 unionisable employees. The Respondent has stated that out of the 60 only 34 are unionisable and still in the employment of the Respondent.

I have noted from the check-off forms that a good number of the employees signed the check-off forms after 13<sup>th</sup> April 2011 when the Claimant requested or recognition.

Mr. Owiyo argued that the Respondent's payroll does not show which of the employees are unionisable. This is a matter that the union needed to prove as it is the Claimant's responsibility to prove its case.

Whichever way one looks at it, even assuming that all 60 names in the Claimant's check-off forms were unionisable employees still in the employment of the Respondent, the Claimant would still not achieve a simple majority which in this case would be 70 employees.

For this reason I find that the Claimant has not proved it qualifies for recognition.

The Claimant has also prayed for remittance of union dues. The Respondent having admitted that it has 34 employees who are in the check list are obliged by virtue of Section 48(3) of the Labour Relations Act to deduct and remit union, dues as specified in check-off forms.

**From the foregoing I Award as follows:-**

1. The claim for recognition of the Claimant union by the Respondent is dismissed.
2. The Respondent is directed to deduct and remit union dues from the salaries of all union members in its employment and remit to the union with effect from July 2013.
3. The Respondent is directed not to victimize or intimidate employees on account of union membership.
4. Each party shall bear its costs.

Orders accordingly.

Read in open Court and Signed on this 25<sup>th</sup> day of June 2013.

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

In the presence of:-

Olilo Nyumba Claimant

Nganga Respondent