



REPUBLIC OF KENYA
 IN THE INDUSTRIAL COURT AT NAIROBI
 CAUSE NUMBER 828 OF 2011

BETWEEN

THE KENYA PLANTATION & AGRICULTURAL
 WORKERS UNION

.....
 CLAIMANT

VERSUS

CARNATION PLANTS LIMITED
 RESPONDENT

Rika

J

CC. David

Kipsang'

Mr. Meshack Khisa Industrial Relations Officer of the Claimant, instructed by the Claimant

Ms. Omondi instructed by J.A.Guserwa & Company, Advocates for the Respondent ...

ISSUE IN DISPUTE: RECOGNITION AGREEMENT

DATE CLAIM FILED: 30TH MAY 2011

DATE PROCEEDINGS CLOSED: 13TH FEBRUARY 2013

DATE OF DETERMINATION: 12th July 2013

AWARD

1. Kenya Plantation & Agricultural Workers' Union filed this Claim against Carnation Plants Limited, alleging to have recruited as Members, 1,150 out of a possible total of 1,600 Unionisable Employees of the Respondent, warranting that the Respondent enters into a Recognition Agreement with the Claimant Union. On 4th January 2011, the Claimant forwarded the Check –Off Forms to the Respondent. The Claimant similarly forwarded to the Respondent a Model Recognition Agreement duly signed by the Claimant, requesting the Respondent to sign its part. The Respondent did not effect deduction of Union Dues, and refused to sign the Recognition Agreement, triggering the commencement of this Claim. The Claimant seeks orders that the Respondent:-

- a. Accords formal recognition to the Claimant within 21 days of the delivery of the Award;
- b. Deducts and remits, Trade Union Dues of all Unionisable Employees who are Members of the Claimant; and
- c. Is restrained from victimizing, dismissing, locking out Employees or terminating their contracts of employment on the ground of their affiliation to the Claimant.

2. The Respondent answers in its Statement of Reply that it has 1,780 Unionisable Employees. The Claimant has only managed to recruit 18 of these, way below the simple majority threshold required for recognition under the Labour Relations Act 2007. The Respondent attached a list of these Employees to its Statement of Reply. Trade Union Dues have been deducted from the 18, and remitted to the Trade Union by the Respondent. The Respondent cannot therefore grant the Claimant recognition, the Claimant having failed to recruit a simple majority of the Respondent's Employees. The refusal to sign the Recognition Agreement is based on sound reasons. The Check-Off Forms attached to the Claim are questionable because they are not signed, or stamped by the Respondent. No Employees were locked out on account of their Union Membership, or in any other way victimized. The Respondent has not violated Article 41 of the Constitution of Kenya, the Labour Relations Act, or the International Labour Organization [ILO] Conventions 87 and 98 on freedom of association and the right to bargain collectively. The Respondent prays for the dismissal of the Claim.

3. On 23rd November 2012, the Parties agreed to have the Claim determined by way of submissions, pleadings and documents on record, under Rule 21 of the Industrial Court [Procedure] Rules 2010. The

Claimant filed its submissions on 5th December 2012, while those of the Respondent were received at the Court Registry on 7th February 2013. The dispute was last mentioned in Court on 13th February 2013 when the Court advised Parties Award would be given on Notice.

4. The Claimant emphasizes in its submissions that it has recruited 1,150 out of a total of 1,780 Employees. This is supported by copies of a fifty original Check-Off Forms, which the Respondent acknowledged receiving in a letter dated 31st March 2011. Out of the recruited 1,150 Employees, the Respondent had decided to effect Check-Offs with respect to 18 or 26 Employees, going by Respondent's documents. The Claimant has demonstrated it has recruited a simple majority; is the right union in the sector; and there is no other union claiming the same collective bargaining unit.

5. The Respondent repeats the assertion that the number of Employees recruited by the Claimant, stands at 18 against a total unionisable workforce of 1,780. The Claimant has not met the requirement of Section 54 [1] of the Labour Relations Act 2007. The Check-Off Forms are not signed or stamped by the Respondent as required by the law. In general, the Respondent, not unlike the Claimant, replicates the contents of the Statement of Reply in its submissions.

6. Parties would make the work of this Court lighter if they simply adopted the contents of their pleadings alone, where they have nothing useful to add through the filing of submissions. It is burdensome on judicial economy, where parties have to recycle pleadings in the submissions, while pleadings and the documents attached thereto, on their own, are permissible and would have sufficed.

The Court Finds and Awards:-

7. Section 54 [1] of the Labour Relations Act No. 14 of 2007, requires that an Employer, including an Employer in the Public Sector, shall recognize a Trade Union for purposes of collective bargaining, if that Trade Union represents the simple majority of Unionisable Employees in the particular collective bargaining unit.

8. Recognition gives to the Trade Union a single union deal, or sole collective bargaining agency right. The Trade Union is authorized through the Recognition Agreement to negotiate the terms and conditions of employment on behalf of a group of workers defined as '*the collective bargaining unit.*' The process of negotiation is what is referred to as '*collective bargaining.*'

9. Section 54 [1] is normally read with Section 57 of the Labour Relations Act. Once there is a Recognition Agreement in place, there is a duty placed on the Employer, to conclude a Collective Bargaining Agreement with the Trade Union. Without Section 57, Section 54 would be meaningless, because empty recognition would not result in any collective benefits to the Employees.

10. Trade Unions use the Check –Off Forms under Section 48 of the Labour Relations Act to recruit Members, communicate the fact of Membership to Employers, and call upon the Employers to deduct Trade Union Dues from the recruited Employees' salaries and remit to the Trade Union.

11. There is evidence that the Claimant recruited 1,150 Unionisable Employees of the Respondent, out of an agreed total unionisable workforce of 1,780. The Check-Off Forms are signed by the Employees. They have not recanted Membership. It has not even been argued by the Respondent as Employers are wont to, that the Employees did not join the Trade Union voluntarily, or that they have changed their minds and reversed Membership. The Respondent does not dispute receipt of the Forms. It received the Forms, but for its own reasons, decided to act on 18 or 26 names. These numbers are given variously and confusingly, by the Respondent. The assertion that the Forms are not signed or stamped by the Respondent, and hence invalid, is a grave assault on the Employee's freedom of association. Their signature on the Check-Off lists, not the signature or stamp of the Employer, validates the Check-Off Lists. The Respondent's role upon receipt of these Forms, was to firstly deduct and remit Trade Union Dues immediately, and as soon as practicable execute the Recognition Agreement with the Claimant who quite clearly, has crossed the simple majority threshold under Section 54, and merits the right of recognition. The choice made by the Respondent not to sign or stamp the Forms, is not something that can be held against the validity of the Membership.

12. In addition to the Check-Off Forms, the Respondent was sent a copy of the Model Recognition Agreement. It did not sign, or recommend any changes to the Agreement. Recognition has not been contested by any other Trade Union, seeking to represent the same bargaining unit. The relevance of the Claimant's internal constitution to the industry sought to be represented has not arisen. There is no earthly reason why the Respondent has denied the Claimant and its Members, their respective freedoms and rights that are guaranteed by a succession of laws, domestic and international, as detailed in the submissions of the Claimant.

12. There was nothing in the affidavit of Thomas Kipkemboi the Deputy General Secretary of the Claimant, to support the prayer relating to victimization of its Members by the Respondent. The Claimant did not bring forward the name of any Employee who has been victimized, with or without the details of victimization.

13. The Court ultimately finds the claim for recognition, deduction and remission of Trade Union Dues to have overwhelming support in evidence and law. IT IS HEREBY ORDERED-:

[a] The Respondent shall sign a Recognition Agreement according the Claimant Union formal recognition, within 30 days of the delivery of this Award;

[b] The Respondent shall deduct Trade Union Dues from all the Unionisable Employees who have enlisted with the Claimant Union, and remit to the Claimant Union such deductions without fail; and

[c] No order on the costs.

Dated and delivered at Nairobi this 12th day of July 2013

James Rika

Judge