



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 607 N OF 2009

KENYA PETROLUUM OIL WORKERS UNION

CLAIMANT

v

CHINA PETROLUUM PIPELINE BUREAU LTD

1ST RESPONDENT

SAVOUR AFRICA LTD

2ND RESPONDENT

JUDGMENT

1. Kenya Petroleum Oil Workers Union (Claimant) filed a Memorandum of Claim against China Petroleum Pipeline Bureau Ltd (1st Respondent) and Savour Africa Ltd (2nd Respondent) on 16 October 2009 and the issue in dispute was stated as 'refusal by employer to sign a recognition agreement'. At the same time, a motion application under certificate of urgency was filed.
2. On 20 November 2009 the file was placed before Chemmutut J. and he directed the Respondents to file a Reply on or before 31 December 2009. He further directed that the Cause be heard on 2 February 2010.
3. The Respondent filed its submissions on 18 December 2009 through the firm of J.K. Mwangi & Co. Advocates.
4. On 2 February 2010 the cause was placed before Chemmutut J. for hearing and Mr. Obure, the Union's Organising Secretary appeared for the Claimant while Mr. Mwangi appeared for the Respondents.
5. The record indicates that the parties did not call any oral evidence but relied on the pleadings and oral submissions. After the submissions, Chemmutut J. directed that an award would be announced on notice.
6. Chemmutut J. and other judges of the then Industrial Court ceased to hold office sometime in 2012 before delivery of the award. Information to this effect is in the public domain.
7. New Judges of the Industrial Court took office and as a result the Deputy Registrar of the Industrial Court wrote to the parties on 10 September 2012 to inform them that I had been assigned the Cause and therefore they should appear before me on 21 September 2012 for directions. I did not sit on 21 September 2012 due to other official engagements and a notice was put up in the notice board and cause list advising the parties to appear before me on 24 September 2012.
8. On 24 September 2012 none of the parties appeared and I directed that any of the parties were free to move the Court.
9. Again on 20 November 2012, the Deputy Registrar wrote to the parties to appear before Justice Nzioki wa Makau on 10 December 2012 on my behalf, for directions. It appears from the record none of the parties appeared.
10. On 13 May 2013, the Deputy Registrar, Mombasa where I am currently stationed wrote to the parties to appear before me for taking of further directions on 4 June 2013 or risk the Cause being

- dismissed. The notice to the parties was sent out through EMS Courier.
11. On 4 June 2013 the file was placed before Makau J. as I was away and Mr. Olala appeared for the Claimant while the Respondent did not appear. Makau J. directed further mention on 15 July 2013 because he was not satisfied with service of mention notice.
 12. On 25 June 2013 the Deputy Registrar sent a further notice to the parties to appear for directions on 15 July 2013. On this day, only the Claimant represented by Ms. Owi appeared.
 13. Rule 21 of the Industrial Court (Procedure) Rules, 2010 envisage that the Court subject to the agreement of the parties can determine a suit on the basis of pleadings, affidavits, documents filed and submissions by the parties.
 14. Rule 22 on the other hand permits the court to proceed in the absence of any party. The Respondent was served but did not appear. In the circumstances, I will proceed to determine the cause on the basis of the material on record.
 15. The delay in determining this Cause is regretted because disputes relating to recognition agreements should be determined expeditiously.

Claimant's case

16. The Claimant submitted that it had recruited 23 out of the 30 unionisable employees of the 1st Respondent as at 26 November 2008. And further that there was no rival union.
17. According to the Claimant, it had satisfied the conditions for recognition under section 54(1) of the Labour Relations Act and it sent check-off forms to the 1st Respondent but it refused to grant it recognition.
18. As a consequence, the Claimant reported a trade dispute to the Minister for Labour through a letter dated 17 December 2008.
19. The Minister accepted the dispute and appointed a conciliator. Thirty days elapsed before the dispute could be resolved and the Claimant wrote to the Conciliator on 25 June 2009 seeking that the matter be referred to the Court.

Respondents' case

20. According to the 1st Respondent, it had a total of 51 employees who included both local and expatriate staff and that all of them were unionisable.
21. Further the 1st Respondent submitted that some 11 persons named in the check-off forms were not its employees and 9 had sworn affidavits disowning the Claimant.
22. The 1st Respondent also submitted that there was a rival union called the Amalgamated Union of Kenya Metal Workers and a letter from this union complaining about the Respondent's reduction of drivers' salary was exhibited.
23. Lastly the Respondent submitted that the Claimant had no locus standi as at most it had only 8 genuine members.

Evaluation

24. On the issue of recruitment of simple majority, the Respondents' contended that even expatriate employees were unionisable and therefore the total number of 51 employees should be considered. From the list exhibited to the Response, 33 of the employees were foreign expatriates. But the Respondent did not provide any contractual details which would support this contention. Ordinarily expatriate staff are technical people brought in cases where competent local staff are not available for the purpose of knowledge and skills transfer. I would therefore not accept the submission of the Respondents on this score.
25. As to the submission of a rival union it is not clear whether Amalgamated Union of Kenya Metal Workers had approached the Respondent for recognition or the demand letter was written in the normal course of business of asserting workers rights.
26. It is some 4 years since the Cause was filed and a lot must have changed on the ground. The Claimant should have placed material before the Court to indicate the current status e.g. how many of the members it recruited were still in service, any deductions made from their wages and indeed

whether the Respondents' are still active in Kenya. This could have been through affidavits. But it was not done.

Conclusion and Orders

27. In conclusion, it is my view that because of the time lapse from the filing and initial hearing, the material placed before the Court is not adequate for a proper determination of the Cause. The Claimant should consider fresh recruitment and thereafter follow the law in seeking a recognition agreement from the 1st Respondent.

28. I therefore dismiss the Cause without any orders as to costs.

29. The Deputy Registrar to transmit this file to the Deputy Registrar, Industrial Court Nairobi after delivery of this judgment

Delivered, dated and signed in Mombasa on this 27th day of September 2013

Justice Radido Stephen

Judge