



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 378 OF 2013

**KENYA SHOE AND LEATHER WORKERS
UNION.....CLAIMANT**

VS

**FALCON TANNERS COMPANY LIMITED.....1ST
RESPONDENT**

**MINISTER FOR LABOUR AND HUMAN RESOURCE DEVELOPMENT.....2ND
RESPONDENT**

RULING

Background

1. On 26th January 2012, the Chief Industrial Relations Officer in the Ministry of Labour appointed Hellen Apiyo of the Machakos District Labour Office as Conciliator in a trade dispute between the Claimant and the 1st Respondent. Pursuant to this appointment, Ms. Apiyo invited the parties to attend a joint conciliation meeting on 14th March 2012 and to submit their memoranda on the matter.
2. For some reason, the conciliation process did not proceed with speed and the Claimant came to Court by way of Notice of Motion dated 21st March 2013 seeking orders to compelling the 2nd Respondent to prepare and file its report and directing the 1st Respondent to sign a Recognition Agreement with the Claimant and to deduct and remit union dues.
3. When the matter came before me on 21st March 2013, I certified it urgent and directed the Claimant to serve the Respondents. The 1st Respondent filed Replying Affidavits sworn by its Director, Charles Mutinda Ngeene and some employees of the 1st Respondent in which it was deponed that the check off forms submitted by the Claimant in support of its application contained forgeries of signatures of some of the employees.
4. Following the allegations of forgery, I directed the Conciliator to investigate the matter and file a report in Court which report was filed on 17th May 2013. According to the Conciliator, five employees of the 1st Respondent namely; Stephen Musyoka Ngeene, Danson Munyao Ngeene, John Nyumu Mutua, Benjamin Muthini Mwanja and Patrick Mutiso Mutua had sworn affidavits deponing that the signatures

appended against their names on the list submitted by the Union were forgeries. The conclusion by the Conciliator was that the allegations of forgery were indeed true.

5. Upon receipt of the Conciliator's report on the allegations of forgery, the Court directed her to file her final report on the conciliation process which she filed on 30th May 2013.

6. According to the Conciliator, the facts available to her did not confirm the claim by the Union that it had recruited a simple majority of the unionisable employees of the 1st Respondent which would entitle it to recognition.

7. First, ten of the employees on the Union list were casuals and were only engaged when work was available. Second, ten other employees listed by the Union had denounced their union membership and advised the 1st Respondent not to deduct any union dues from their wages. From this list, two had left the Respondent's employment while one by the name Titus Mutuku was deceased. Third, a second list submitted by the Union purportedly signed by five employees on 31st July 2012 was found to be a forgery.

8. The Conciliator concluded that although the Union had the constitutional mandate to represent employees of the 1st Respondent, it had not fulfilled the requirement for recognition as set out in Section 54(2) of the Labour Relations Act. The Conciliator therefore recommended that the status quo be maintained until such a time when the Union will have recruited a simple majority of the 1st Respondent's employees as its members.

Objection by the Union

9. The Union objected to both reports by the Conciliator. The Court therefore heard the parties on 12th July 2013. Mr. Odhiambo for the Union submitted that the Union had, between 6th October 2011 and 31st July 2012, recruited 24 out of 30 employees of the 1st Respondent.

10. Mr. Odhiambo further submitted that the Claimant Union was the recognised union within the sector in which the 1st Respondent operated and that there was no rival union. The only issue was whether the Claimant Union had attained a simple majority within the 1st Respondent's unionisable establishment.

11. With regard to the employees who had denounced their union membership, Mr. Odhiambo submitted that the correct procedure for withdrawal from membership had not been followed.

12. Boniface Mesembi, a former employee of the 1st Respondent, who referred to himself as the Union representative in Machakos Branch testified on oath that he had recruited ten employees of the 1st Respondent as union members on 17th October 2011 and a further six employees on 31st July 2012. Musembi however admitted in cross examination that eight out of the employees he had recruited had left the 1st Respondent's employment.

The 1st Respondent's Reply

13. In response to the Claimant Union's application for recognition, the 1st Respondent filed 15 affidavits. The first affidavit was sworn by Charles Mutinda Ngeene, a Director of the 1st Respondent while the rest were sworn by employees of the 1st Respondent to the effect that they were not members of the Union and were opposed to any union deductions being made from their wages.

14. A further affidavit sworn by Ngeene explained the status of each alleged union member. Ten of the persons named on the Claimant's list were not in the 1st Respondent's employment, another ten had denounced their membership while five had disowned the signatures appearing against their names.

Ruling by the Court

15. The issue for determination in this application is whether the Claimant Union is entitled to recognition by the 1st Respondent and payment of union dues on account of the unionisable employees of the 1st Respondent.

16. 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.

17. The Claimant Union claimed to have recruited 24 out of 30 employees of the 1st Respondent. The 1st Respondent however controverted the Claimant's submission in this regard by way of several affidavits in which it was deponed that ten of the alleged members were not in the 1st Respondent's employment while another ten had denounced their membership. Another five had disowned the signatures appearing against their names.

18. The Claimant challenged the authenticity of the affidavits sworn by the alleged union members as they appeared to have been prepared by the same hand. The Claimant even accused the 1st Respondent of coercion and intimidation and alluded to lack of independence on the part of the Conciliator. However, no evidence in support these allegations was availed to the Court. I have therefore disregarded these aspersions in reaching my decision.

19. The law on recognition of a trade union is clear. A trade union seeking recognition must have a simple majority of unionisable employees as its members. The mode of recruitment and maintenance of members is also clear. It is not enough for a trade union to say it represents the simple majority of unionisable employees. This assertion must be supported by clear documentation.

20. From the documents submitted by the Claimant and the sworn testimony of Boniface Musembi, the Court did not find any evidence that the Claimant Union had attained the required threshold for recognition.

21. I therefore confirm the Conciliator's report and dismiss the Claimant's application with no order for costs.

DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2013

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JUDGE

In the Presence of:

.....**Claimant**

.....**Respondent**

