



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 106 OF 2011

KENYA UNION OF COMMERCIAL FOOD

& ALLIED WORKERS.....CLAIMANT

-VERSUS-

G4S SECURITY SERVICES KENYA LTD.RESPONDENT

Mr. Nyabena for Claimant.

M/s. Kirimi for Respondent.

RULING

The Claimant filed a Memorandum of Claim dated 20th January, 2011 on 4th February, 2011 alleging refusal by the employer to negotiate a Collective Bargaining Agreement (CBA).

The matter was brought under **Section 69 (a)** of the **Industrial Relations Act No. 14 of 2007**, which reads:

“A trade dispute is deemed to be unresolved after conciliation if the – a conciliator issues a certificate that the dispute has not been resolved by conciliation;”

In a certificate of unresolved dispute dated 10th November, 2009, Mrs. G. Mweresa, the appointed conciliator by the Ministry of Labour and Human Resource Department, advised the parties to take the matter to the next level which is this court.

The Respondent filed a Memorandum of Reply dated 2nd February, 2012 and a supplementary Memorandum of Reply dated 14th September, 2012.

The parties agreed to proceed with the matter by way of written submissions.

The Claimant filed its written submissions on 4th April, 2013 while the Respondent filed its written submissions on 17th April, 2013. The Respondent also relies on a list of authorities filed earlier on 17th September, 2012.

The claim is premised on allegations by the Claimant union that the Respondent has refused to engage it in negotiating a CBA unlawfully.

That affiliate unions based in other countries where the Respondent operates have concluded CBA's with the Respondent and it has no justification for refusing to negotiate with the Claimant union.

That it is the rightful union to represent guards in Kenya and it relies on **Section 54 (1) and (2)** of the **Labour Relations Act, 2007** and **Article 41** of the Kenya Constitution, 2010 to assert its right of representation which it seeks the court to uphold.

Section 54 (1) and (2) obliges an employer, group of employers or employer's organization to recognize a union that represents a simple majority of unionisable employees employed by the employer or group of employers who are members of the employer's organization within a sector.

The Claimant union presents itself as a union which represents a simple majority of unionisable employees within an employer's organization called **Kenya Security Industry Association (KSIA)** which is an organization of employers recognized under **Section 54 (2)** of the Labour Relations Act 2007 above said.

In its Memorandum of Claim, the Claimant alleges that it has a valid recognition agreement with the Respondent and has attached a recognition agreement marked Appendix 8 between Securicor Kenya Limited (Managing Agent) for the Securicor Group of Companies operating in Kenya namely:

1. Securicor Guards of Kenya Ltd.
2. Securicor Alarms Kenya Ltd.
3. Securicor Courier Kenya Ltd.
4. Securicor Cash in Transit Kenya Ltd.and

The Kenya Union of Commercial Food and Allied Workers (the Claimant).

No averments are made in the Memorandum of Claim to explain how G4S Security Services Kenya Limited, the Respondents herein, come into the picture with regard to the issue of recognition because the Respondent is not one of the companies listed in the Recognition Agreement attached.

In its Memorandum of Reply, the Respondent admits that it is a member of the Kenya Security Industry Association (KSIA).

The Respondent while admitting that there is an agreement between UNI Global Union and G4S PLC, to which the Claimant states it is affiliated to, the Respondent states that the agreement is not applicable to the Respondent company in Kenya.

The Respondent further admits that the Regulation of Wages (Protective Security Service) Order, 1998 as amended in 2003, applies to some of its employees engaged in private investigations or security consultancy, guarding and escort of money and valuable property.

The Respondent denies that it met the Claimant on 18th March, 2009 or at all as alleged in the Memorandum of Claim but admits that it wrote to the Claimant in 2009 pointing out that given that there was a Wages Council in which its employees were represented by duly elected representatives, the council was the best suited organ to determine the terms and conditions of service for the employees in the industry and as such regulations would be enforceable across the board. This was offered as an alternative to the proposed collective bargaining by the Claimant.

The dispute was then reported to the Ministry of Labour as set out in the Claimant's Memorandum of Claim.

The Respondent states that there is no basis for the Claimant's demand for recognition as it has not met the minimum legal requirements for such recognition.

That being a member of KSIA any CBA negotiations would be done with KSIA and not its individual

members as proposed by the Claimant in terms of **Section 54 (2)** of the Labour Relations Act, 2007.

That the Claimant has not demonstrated that it has attained a simple majority of the Respondent's employees comprising a total work force of 14,190 members.

In addition, the Respondent denies that it has a recognition agreement as alleged in its Memorandum of Claim paragraph 5 or at all.

The Respondent in addition insists that the provisions of the Protective Security Service Order are applicable to all players in the industry and is not dependent upon the financial position of the employer.

Furthermore, another union, the **Kenya National Private Security Workers Union** also claims to represent employees in security companies bringing in confusion in the industry.

That the Wages Council that determines the terms and conditions of service in the industry comprises of the Federation of Kenya Employees (FKE) and Central Organisation of Trade Unions (COTU) to which the Claimant union is affiliated and therefore it cannot be heard to fault the terms of service agreed upon in the sector.

The Respondent denies it has flouted any law or convention of International Labour Organisation (ILO) or at all.

That Freedom of Association under **Article 41** of the Constitution and **Convention 98** is moderated by Kenyan Labour Laws and therefore, the Claimant cannot insist on an absolute right to negotiate a CBA.

In its supplementary Memorandum of Reply, the Respondent states that the Industrial Court and the Chief Industrial Relations Officer have held that Kenya National Private Security Workers Union which replaced Kenya Guards and Allied Workers Union should be granted freedom to represent security guards since this sector is no longer in the domain of Kenya Union of Commercial, Food and Allied Workers (the Claimant herein).

The letter from Mr. G.A. Omondi, Chief Industrial Relations Officer is attached to the Memorandum of Reply wherein is cited **Industrial Court Cause No. 70 of 2002** wherein the court directed the Claimant union to delete the words "watchmen organization" from its constitution and therefore ceased to represent security personnel who should forthwith be represented by the Kenya National Private Security Workers Union.

In its written submissions the Respondent has pointed out that the Claimant union has not appealed the decision of the Industrial Court in Cause No. 70 of 2007 delivered on 19th September, 2003. It is the Respondent's submission that the Claimant union is bound to respect this decision or else its conduct in seeking to represent guards in the sector violates the decision of the court and should attract punishment for contempt of court.

The court has carefully considered the pleadings by the parties, the written submissions and the authorities presented and has isolated the following issues for determination:

0. Whether the Claimant union has a recognition agreement with the Respondent.
0. If not, if the Claimant union has satisfied the requirements for recognition by the Respondent to entitle it to represent its unionisable employees.
0. Whether or not the Claimant union is bound by the decision of the Industrial Court in Cause No. 70 of 2002.
0. Remedies available.

From the evidence before court, it is without hesitation that the court finds that the claimant union has failed to prove on a balance of probabilities that it has existing recognition agreement with the Respondent. Annex 8 to the Memorandum of Claim makes no reference at all to the Respondent and therefore, the Respondent cannot be said to be a party to the Recognition Agreement dated 14th November, 1983.

No addendum to the agreement has been produced purporting to incorporate the Respondent as a party to the said Recognition Agreement. The submissions by the Claimant that the entities cited in the agreement have since evolved to G4S Security Services Kenya Limited holds no water in light of lack of legal documentation to show that evolution.

The next issue is whether the Claimant union has satisfied the requirements of **Section 54** to warrant recognition by the Respondent.

No evidence has been presented at all to show that the Claimant union has recruited a simple majority of the unionisable employees of the Respondent company. The Claimant has made bald allegations in this regard and the court finds that, the Respondent is not bound to recognize the Claimant union in the circumstances of this case.

Collective bargaining is predicated on recognition agreement between the employer and the union and therefore, the respondent is not bound to negotiate terms and conditions of its unionisable employees with the Claimant union at all.

The court further finds that the Claimant union is bound by the decision of the Industrial Court in Cause No. 70 of 2002, **Kenya Union of Commercial Food & Allied Workers vs. Kenya Guard Services and 30 others** which decision has not been appealed against and therefore remains in force.

It is the court's finding that the Claimant's constitution does not allow it to represent unionisable employees in the security sector as was directed by the Industrial Court on 19th September, 2003.

Accordingly, the entire application lacks merit and is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 10th day of September, 2013.

MATHEWS N. NDUMA

PRINCIPAL JUDGE