

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE

VERSUS

On 26/10/2010 the claimant brought this suit seeking orders to compel the respondent to sign Recognition Agreement with her and thereafter the two parties to conclude Collective Bargaining Agreement (CBA). The basis of the suit is that the claimant recruited 19 of the 23 members of staff for the respondent, caused them to sign check off form authorizing deductions of union dues from their salaries and forwarded the same to the respondent. That the respondent failed to comply with the check-off forms which cited the ministerial order made on 23/12/2005 under Section 45 of the Trade Dispute Act. According to the claimant, she recruited members of the union represented over 78% of the total unionisable workers.

The issues for determination arising from the pleadings and submissions are:

1. Whether the order sought ought to issue.

In the present case, the claimant recruited 19 members according to the check off forms produced as exhibit. The total number of staff for the respondent was 37 according to the list of staff members produced by the respondent. Two out of the 37 members of staff were terminated leaving a balance of 35. The two employees terminated were not among the members recruited by the claimant and therefore termination of the workers gave advantage to the claimant. It is therefore obvious that as at the time of bringing the suit the 19 members recruited represented more than a simple majority of the respondent's unionisable staff. The claimant therefore satisfied the criterion for granting recognition. Whether the number was later reduced through the so called malicious victimization, the position did not change.

Consequently, the court hereby orders and directs the respondent to accord and sign Recognition Agreement in favour of the claimant and to forthwith commence deducting union dues from salary of the union members in her establishment and remit to the claimant every month. Each party shall bore her own costs.

Signed dated and delivered this 4th October 2013

JUDGE