



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**  
**(BIMA TOWERS)**  
**CAUSE NO. 216 OF 2013**  
**(Originally Nairobi Cause No. 424 of 2011)**

**KENYA PETROLEUM OIL WORKERS UNION .....CLAIMANT**

v

**PETRO OIL KENYA LTD.....RESPONDENT**

**JUDGMENT**

1. The Kenya Petroleum Oil Workers Union (the Union) filed a Statement of Claim on 21 March 2011 against Petro Oil Kenya Ltd (Respondent) and the issue in dispute was stated as *refusal to sign recognition agreement and to effect union dues deductions by the Respondent*. The Statement of Claim was accompanied with a motion under certificate of urgency.
2. On 6 April 2011 the Respondent filed a Reply to the Statement of Claim and replying affidavit to the motion and on 7 April 2011. Kosgei J. granted an order restraining the Respondent from terminating the services of its employees or victimizing them because of union activities. The orders were later extended. On 28 August 2011 the Respondent filed a Supplementary Reply to the Statement of Claim pursuant to leave granted on 12 August 2011.
3. Kosgei J heard the Cause on 7 November 2011 after which he directed that he would deliver an award on notice. Kosgei J ceased holding office as judge of the Industrial Court sometime in July 2012 before delivering the award.
4. On 28 August 2013 the parties appeared before me and they signaled their agreement to my preparing an award on the basis of the record, pleadings, documents filed and submissions made before Kosgei J. Rule 21 of the Industrial Court (Procedure) Rules, 2010 allow the Court to determine a Cause on the basis of pleadings, affidavits and submissions of the parties.

**Union's case**

5. The Union pleaded that it is a registered trade union and that its constitution allows it to recruit within the petroleum oil and gas industries.
6. On 7 March 2011 the Union wrote to the Respondent forwarding membership forms of employees who had joined it and seeking that the Respondent commences deducting union subscriptions and remitting the same. The letter also requested the Respondent to sign a recognition agreement which was enclosed.

7. The Respondent responded to the letter on 17 March 2011 seeking certain clarifications but at the same time it started terminating the services of employees.
8. According to the union it had recruited 42 employees of the Respondent and that by refusing to deduct and remit union dues the Respondent was in breach of sections 4,5(a) and (c),48(2) and (3) ,54 of the Labour Relations Act and sections 41 and 45 of the Employment Act.
9. The Union therefore sought orders restraining the Respondent from victimizing and terminating any employee; directing the Respondent to sign a recognition agreement; effect check off system and remit the deductions to the union's bank account and costs.

### **Respondent's case**

10. The Respondent pleaded that it had not refused to sign a recognition agreement with the Union or to deduct and remit union dues but that it sought to be furnished with the ministerial order authorizing deductions. It admitted being served with check off forms on 18 March 2011 two days before the filing of this Cause but states the employees did not authorize deductions of dues in favour of the union and in any case deductions could be effected only after 30 days.
11. The Respondent further denied intimidating or locking out employees. In the Supplementary Reply the Respondent pleaded that any employees who had been terminated were paid all their entitlements and they signed discharge vouchers on receipt of the payments, and were issued with certificates of service.

### **Evaluation**

#### ***Deduction of union dues***

12. Section 48 of the Labour Relations Act provides that a trade union may in the prescribed form request the Minister to issue an order directing an employer of more than five employees belonging to a union to deduct trade union dues and pay the monies so deducted into a specified account of the trade union. The dues are deductible within 30 days of the union serving a notice in form S.
13. In the instant case the Union notified the Respondent through letter dated 7 March 2011 but moved the Court on 21 March 2011.
14. The Respondent sought to be furnished with a copy of the Ministerial order. The orders are normally gazetted in the Kenya Gazette. The Union did not respond to the Respondent's requests. It also pleaded that the employees had to give express consents authorizing union deductions.
15. But the form S (check-off forms) sent to the Respondent made reference to Gazette Notice No. 745 of 2 February 1998 by the Minister for Labour pursuant to section 45 of the Trade Disputes Act (now repealed). The form also gave an account number and bank details. The Respondent was therefore aware of the Ministerial order.
16. In my view, there is no legal requirement for an employee who has signaled his union membership by signing form S (check-off) to give to the employer another authorization to deduct union dues.

#### ***Recognition agreement***

17. Employers don't grant unions recognition as of right. Article 41(4) of the Constitution enshrines the rights of trade unions as juristic bodies. A trade union has the right to organise and to engage in collective bargaining. Collective bargaining cannot take place without recognition of the trade union by an employer. A trade union must first recruit and demonstrate that it has recruited and represents a simple majority of the unionisable employees of a particular employer. That is what section 54 of the Labour Relations Act demands.
18. To enable it organise a trade union is entitled to access the premises of an employer to pursue its lawful trade union activities.
19. The Union herein pleaded that it had recruited 42 of the Respondent's employees. The statement of Claim did not have a supporting affidavit (the Motion application was supported by the affidavit of Raphael Ouma and the affidavit states the Union had recruited 42 out of 80

- unionisable employees of the Respondent).
20. This particular deposition (that Respondent had 80 unionisable employees) was not denied or traversed by the Respondent in the Replying Affidavit.
21. I therefore find that the Union therefore had recruited more than a simple majority of the Respondent's unionisable employees.

***Intimidation/victimization of employees***

22. It was the case of the Union that the Respondent was terminating the services of employees because of union activities. These allegations were not proved either through affidavit or otherwise. Termination letters and redundancy letters were annexed to the motion application. For the main claim evidence should have been brought to demonstrate or show why the terminations were unfair. Termination on the basis of union activities is out rightly outlawed in the Employment Act.
23. The Union however did not place any sufficient material evidence before the Court to enable it make a determination as to whether there was intimidation or victimization of employees on the basis of their union activities.

**Conclusion and Orders**

24. In the final analysis it is my finding and I hold that the Union moved to Court before the time allowed for the deduction of union dues had expired and further had not given sufficient time to the Respondent to verify the forms S and therefore the claim was premature.
25. The order which follows from the foregoing is to decline the prayers sought by the Union.
26. The Union is at liberty to commence organising as it is allowed by the Constitution through the set out legal parameters so as to be granted recognition by the Respondent.
27. There will be no order as to costs.

**Delivered, dated and signed in open Court in Mombasa on this 1<sup>st</sup> day of November 2013.**

**Radido Stephen**

**Judge**

**Appearances**

**Mr. Olala, Branch Secretary Kenya Petroleum Oil Workers Union for Union**

**Mrs. Nyutu instructed by Sheth & Wathigo Advocates for Respondent**