



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1557 OF 2013

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT

VS

RADAR SECURITY.....RESPONDENT

RULING

Introduction

1. This ruling emanates from the Claimant's Notice of Motion dated 26th September 2013. When the matter first came before me under certificate of urgency *ex parte* on 30th September 2013, I certified it urgent and directed the Claimant to serve the Respondent for an *inter partes* hearing on 6th November 2013. The Respondent was served on 1st November 2013 but made no appearance. I therefore proceeded to hear the Claimant as scheduled.

The Claimant's Application

2. The Claimant seeks an order compelling the Respondent to negotiate a collective bargaining agreement with the Claimant. The Claimant's application, which is supported by the affidavit of Isaac G.M Andabwa, is based on the following grounds:
- a. That the Claimant and the Respondent entered into a recognition agreement on 3rd August 2004;
 - b. That the Respondent has from time to time remitted union dues to the Claimant through a checkoff system;
 - c. That the Respondent has unlawfully refused to negotiate a collective bargaining agreement;
 - d. That the Respondent has failed to honour the Claimant's request for a joint meeting for purposes of collective bargaining;
 - e. That the Respondent's action continues to cause loss to the Claimant and its members.

The Claimant's Submissions

3. Miss Onyancha for the Claimant submitted that since the signing of the recognition agreement on 3rd August 2004, not a single collective bargaining agreement had been concluded.
4. Counsel told the Court that on 15th February 2012, a joint meeting was held between the Claimant and the Respondent at which the Respondent's Managing Director had undertaken to negotiate a

collective bargaining agreement. On 23rd March 2012, the Claimant wrote to the Respondent proposing to kick start negotiations on 2nd April 2012. One year down the line, no negotiations had taken place. The dispute had gone through the conciliation process and a certificate of disagreement issued by the Conciliator.

Ruling by the Court

5. Article 41(5) of the Constitution, 2010 provides that:

(5)Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

6. Section 57(1) of the Labour Relations Act requires an employer that has recognised a trade union to conclude a collective agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.

7. In view of the agreement relative to recognition and negotiating procedure entered into between the Kenya Guards and Allied Workers Union, the precursor of the Claimant and the Respondent on 3rd August 2004, I find no reason for the Respondent's failure to conclude a collective agreement with the Claimant. I therefore direct the parties to begin negotiations leading to conclusion of a collective agreement and file a report in this Court within the next 60 days from the date of this ruling.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH DAY OF DECEMBER 2013

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JUDGE

In the Presence of:

.....*Claimant*
.....*Respondent*