



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**  
**AT MOMBASA**  
**CAUSE NO. 124[B] OF 2013**

**AMALGAMATED UNION OF KENYA METAL WORKERS .....CLAIMANTS**  
**VERSUS**  
**CIVICON LIMITED .....RESPONDENTS**

**J U D G M E N T**

**BACKGROUND**

The claimant has filed suit against the respondent seeking to be accorded recognition as a trade union to represent the respondent unionisable staff. The suit also seeks for orders to compel the respondent to deduct union dues from the wages of the union members and remit to the claimant. The respondent opposed the claim and contended that the claimant had not recruited a simple majority of the respondents unionisable staff.

After lengthy negotiations between the parties and visits to the respondents offices, the parties agreed not to call witnesses to testify. Instead they agreed to dispose of the suits by filing written submissions.

**CLAIMANT'S CASE**

It was submitted that as at the time of filing the suit, the claimant had recruited 475 members which was added by 252 members as at 24/8/2012 making the total of 727 of the 1050 unionisable staff of the respondent. The said figure represented 78.4%. After a fact finding tour of the respondents premises in July 2013 it was found that the respondent's unionisable staff were 630 of which 354 were members of the claimant. The above figure represented 55% of the unionisable staff.

**RESPONDENTS' CASE**

The defence submitted that as at the time of filing the suit the respondent had 1417 employees of which 54 were not unionisable. It means therefore that the unionisable staff were 1363 and a simple majority thereof ought to have been 683 and not 475 recruited as at the time of filing the suit.

It was further submitted that during the pendency of this suit 167 employees wrote letters

withdrawing their membership from the union thereby reducing the members to 291 as at 18/9/2013. Consequently, it was contended that the claimant never satisfied Section 54 of the Labour Relations Act of recruiting a simple majority of the unionisable staff of the respondent.

The respondent further submitted that as at 30/7/2013 the claimant had 345 members still working for the respondent. However the respondent maintains that as at the said date her unionisable staff was 1417 and not 630 as submitted by the claimant. The defence relied on the joint report by the parties dated 22/7/2013. It was also submitted by the defence that no evidence of victimization was adduced and therefore the allegation of victimization of claimants members was baseless.

### **ANALYSIS AND DETERMINATION**

Upon perusing of pleadings, evidence, reports of site visits and the submissions filed, the following issues arise for determination:

- 1. whether the claimant has met the threshold for the grant of recognition as trade union.**
- 2. Whether the orders sought ought to issue.**

The court has considered and agrees with the defence that as at the time of filing the suit the claimant had not recruited a simple majority of the respondent's unionisable staff. She had recruited 475 before filing the suit but later increased the membership by 252 members. To that extent the answer to the first issue would be in the negative because 475 does not represent a simple majority of the 1050 unionisable members of staff then.

The court will however not fail to appreciate that the claimant has the right to continue to recruit new members as she did after filing the suit. She will also be free to continue to recruiting after this suit. Consequently the court must consider the present circumstances because the court's purpose is to do justice. The question to answer therefore is whether the court is bared to order recognition if presently the claimant has satisfied the requirements of a simple majority as required by Section 54 *supra*. In this court's view, the answer to the foregoing question should be in the affirmative.

The court has therefore established from the reports filed by the parties dated 30/7/2013 that the respondent has a total of 580 unionisable staff of which 120 were permanent and rest on renewable fixed term contracts. The parties also signed and filed a consent dated 22/7/2013 confirming that they had verified that 345 of the respondent's unionisable staff were members of the claimant. Indeed by the said consent the respondent undertook to deduct and remit union dues in respect of the 345 union members.

In view of the fact that 345 out of 580 were found to be members of the union as at 30/7/2013 which represents approximately 60% of the unionisable staff, it is obvious that the simple majority threshold prescribed by the Section 54 *supra* was met. Even if that was not the case at the commencement of the suit, the court is of view that substantive justice demands that the unionisable staff of the respondent ought to be granted their constitutional right to have a trade union of their choice to represent them in their labour relations.

Consequently the answer to the question of the orders sought, is that an order to compel recognition of the union should issue. It is an undisputed fact that about 60% of unionisable staff are members of the claimant currently and as such it serve no purpose to deny them the right to have their union recognized by their employer.

Likewise the order for deductions and remittance of union dues in respect of union members should also naturally follow from the foregoing order of recognition. In any case the exercise has already started by the voluntary agreement between the parties even before the closure of the hearing. The same shall continue in respect of the 345 members and any new members who may be recruited.

As regards the order to restrain victimization of the members of the union, no evidence has been tendered to support the allegation. The order is therefore declined but with a caveat that should any

member of the union be victimized after this judgment, he or she will be free to move the court under the relevant provision of the law.

### **DISPOSITION**

In view of all the reasons aforesaid, the court enters judgment for the claimant against the respondent as follows:

- a. **that respondent is ordered to accord recognition to the claimant forthwith by signing a Recognition Agreement.**
- b. **The respondent is ordered to comply with Section 48 of Labour Relations Act by deducting union dues from all the claimants members in the respondents staff and remitting it to the claimant's gazetted bank Account.**
- c. **Each party to bare her costs as a way of promoting good future relationship.**

**Signed dated and delivered this 6th day of December 2013**

**ONESMUS MAKAU**

**JUDGE**