



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 552 of 2009

KENYA LONG DISTANCE TRUCK DRIVERS

AND ALLIED WORKERS UNION..... CLAIMANT

VERSUS

A.Z. JUMA LIMITED.....RESPONDENT

JUDGMENT

On 1-10-2009, the Claimant filed a Memorandum of Claim on behalf of the Respondent's employees asking the Court to make the following orders against the Respondent:-

- (a) Deduction and Remittance of Union dues to the Claimant backdated to January, 2009.
- (b) Grant of Recognition to the Claimant through a Recognition Agreement.
- (c) Any other order that the Court may deem fit to order.

The Respondent has filed a reply alleging that the Claimant has not recruited a simple majority (51%) of the unionisable employees as members and prays for the claim to be dismissed.

The case came up for hearing on 16-9-2010 when Mr. Kilonzi and Mr. Okubati appeared for the Claimant and Respondent respectively.

They did not call any witnesses but only made oral submissions on their respective pleadings and asked the court to make an Award.

I have carefully perused the pleadings and the submissions made by both parties. It is not in dispute

that this dispute started in August, 2008 when the Claimant demanded deductions and remittance of Union dues for 22 unionisable workers who had been recruited into the Claimant's membership. When the Respondent declined, the dispute was reported to the Labour Office and agreement for deductions and remittance of union dues was signed by the parties herein in the presence of the Labour Officer on 18-12-2008.

That the Respondent did not honour the said mutual agreement. That the reason was because the alleged recruited members complained that the union deductions were on the higher side and they subsequently resigned. The resignations are addressed to the Respondent(employer) and not the Claimant Union.

According to the Claimant, the Respondent intimidated the employees by requiring them to sign some ambiguous forms which are strange to the law. None of those intimidated has been called to testify or even swear any affidavit to support the allegation of intimidation or interference with voluntary membership of the employee in the Claimant Union.

The question that arises in mind is whether the Claimant has made out a case on a balance of probability to warrant the relief sought?

I have no doubt in my mind that the evidence by the Respondent and in particular of Appendix 7 stands uncontroverted. The letters from eleven (11) recruited members withdrawing from the Claimant in writing, though the letters were addressed to the Respondent most of them were copied to the Claimant. I have already observed that the Claimant has done nothing to rebut the evidence of resignation.

I am persuaded by that even if the correct procedure was not followed to tender resignation under the Claimant's Constitution, that cannot be interpreted against the Bill of Rights in our Kenyan Constitution which guarantees freedom of association. The intention of the respective members to resign from the Claimant Union is hereby respected. That reduces the recruited members from 22 to 11 out of 40 unionisable workers. As such, the Claimant cannot claim any simple majority of the unionisable employees to warrant the relief for Recognition.

Having so found, this Court is left with the obvious task of dismissing the Claim with no order as to costs.

The Claimant is free to begin fresh recruitment.

Orders accordingly.

DATED and DELIVERED at Nairobi this 28th day of September 2012.

Onesmus N. Makau
JUDGE