



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO. 369 OF 2009**

**CLAIMANT: KENYA CHEMICAL AND ALLIED WORKERS UNION**

**RESPONDENT: BIDCO OIL REFINERIES LIMITED**

**INTERESTED PARTY: KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS**

**RULING**

1. On a date which is not clear from the Statement of Claim in the Court file, the Kenya Chemical and Allied Workers Union(hereinafter the Union) filed the Cause herein against Bidco Oil Refineries Ltd (hereinafter the Respondent).The issues in dispute were stated as the *'non-implementation or refusal to implement deductions of union dues from 629 employees of the company who have consented their union membership'* and *'refusal by the company to sign recognition agreement with the union, despite the fact that we have attained far beyond the simple majority required by the Act.'*
2. By their very nature applications for recognition agreement should be determined within the very shortest time possible based on the provisions of section 74 of the Labour Relations Act.
3. It is not clear from the record if the Respondent was served but the record bears out that the Union's and Respondent's representatives appeared before Justice Chemmutut on 23 July 2007 when the Respondent were directed to file a Response to the Claim on or before 6 August 2009 with a hearing date fixed for 10 September 2009. As a consequence the respondent filed a Response on 6 August 2009 and Further Response on 17 September 2009.
4. On 10 September 2009, the parties appeared before Court and the Respondent's advocate informed the Court that the Interested party had expressed interest this Cause through a letter. Reference was also made to Cause No. 126 of 2000.Hearing was adjourned to 18 September 2009.
5. On 18 September 2009, Mr. Egesa applied to the Court to enjoin the Interested party into the proceedings. The Court rejected the application on the spot on the grounds that the Interested party had failed to comply with Section 62 of the Labour Relations Act and the application was belated It is again

not clear if the application was merely oral or there was a formal application.

6. The record indicates that the hearing commenced immediately thereafter and Mr. Ogutu urged the Union's case. After hearing the submissions from the parties, the Judge ordered that an award would be issued on notice. That was on 18 September 2009!!
7. Nearly 2 years later, after the Court had ordered it would give an award on notice, specifically on 11 May 2011, Mr. Dola Indidis from the firm of Dola Magani & Co. Advocates acting on behalf of the Union, **Kenya Chemical and Allied Workers Union**, the Claimant herein, filed an application under Certificate of Urgency. The application in the main sought that the Interested party, **Kenya Union of Commercial, Food and Allied Workers** be enjoined in the proceedings. The application was supported by the affidavit of one Hezron Opiyo Anyuo who averred he was the Union's Thika Branch Secretary.
8. The Court record bears out that on 19 May 2011, Justice Chemmutut instead of dealing with the prayer to enjoin the Interested party only dealt with and issued restraining orders against the Interested party from recruiting any employee of the Respondent pending the delivery of an award in this case.
9. What is obvious is that the application by the Union was heard and orders issued against the Interested party without granting it a hearing. Up to now the Interested party has not been heard on this application of 15 May 2011. That the rules of natural justice were not observed does not bear repeating. It is also noteworthy that the firm of Dola Magani & Co. Advocates brought the application on behalf of the Union under circumstances which are not very clear!
10. On 3 June 2011, the Interested party, feeling aggrieved with the restraining orders issued against it, brought its own application seeking the *review, setting aside or vacation* of the restraining orders issued ex parte on 19 May 2011. The Interested party also sought the confirmation of an award made in Cause No. 126 of 2000, *Kenya Union of Commercial, Food and Allied Workers v Bidco Refineries Ltd*. This application is also still pending and has not been heard.
11. Recognizing that this application has not been heard, and after looking at the award made in Cause No. 126 of 2000, in which the Court rejected the demand by the Interested party for recognition by the Respondent, am not sure what award it wanted confirmed.
12. The story does not end there however. On 9 September 2011, the Interested party filed yet another application under certificate of urgency seeking various injunctive orders against the Respondent! This further application has also not been determined. Without saying so explicitly, this further application appeared to suggest there is a valid recognition between the Interested party and the Respondent. I say this because a Mr. Michael Kamau in his supporting affidavit has averred that the Interested party had recruited a simple majority of the employees of the Respondent and forwarded the forms to the Respondent who in turn has refused to grant it recognition. It thus had reported a dispute to the Minister for Labour on 10 May 2011.
13. It is under these prevailing circumstances that I asked the parties to address me. What emerged from the submissions of the Union and the Interested party is that there is no consensus on whether the Court should proceed with the multiple applications or prepare and deliver an award.
14. The Union and the Interested party, both duly registered unions are fighting a tuff war over the proper and valid union to represent the interests of the unionisable employees of the Respondent. The Constitution in Article 41 guarantees the right of workers to *form join or participate in the activities and programmes of a trade union*. Article 31 on the other hand guarantees *freedom of association*. Section 54 of the Labour Relations Act requires the Court to take into account the sector in which the employer operates when determining questions of recognition agreements. Both the Union and the Interested party contend they are the proper union to represent the employees of the Respondent. There are serious issues of law which require resolution.
15. The Union insisted that I proceed and prepare and deliver an award. The Judge who had heard the

dispute and ordered that an award would be delivered on notice ceased to hold office before preparing an award. The legal framework under which the Industrial Court operates has also substantially changed with the promulgation of the Constitution 2010 and enactment of the Industrial Court Act 2011.

**16.** This is an old matter filed in 2009. A lot of changes must have occurred in between. The legal framework under which the Industrial Court operates has also substantially changed with the promulgation of the Constitution 2010 and enactment of the Industrial Court Act 2011.

**17.** It is not clear what the situation on the ground is. Are those employees of the Respondent who signed the check-off forms with the Union still in employment? What about those who were subsequently recruited by the Interested party? Could there be employees who signed the forms with both the union and the Interested party? Would it be just and expedient to send in the Commissioner for Labour to carry out a ballot? There are many questions which could be asked. The answers to those questions would be relevant in making a determination of how this Cause should proceed.

**18.** The Interested party has a direct and substantial interest in any order or award this Court may make in these proceedings and may be prejudiced if it is not heard.

**19.** Considering what I have said particularly from paragraph 13 above the order that commends itself to me is to the Commissioner for Labour to carry out a ballot of the Respondents unionisable employees within the next 30 days and file a report with the Court and that further directions will be given after receipt of the report.

### **Orders**

**20.** In the circumstances it is ordered that:

(i) The applications dated 6 June 2011 and 9 September 2011 are stayed.

(ii) The Claimant Union is directed to serve a copy of this ruling upon the Advocates on record for the Respondent.

(iii) The Registrar of this Court is directed to serve a copy on the Commissioner for Labour so that he put in place the necessary arrangement for the ballot.

(iv) This matter will be mentioned on 9 November 2011 for further directions.

**21.** There will be no order as to costs.

Dated and delivered in open Court at Nairobi this 5th day of October 2012.

**Radido Stephen**

**Judge**

**Representations**

Mr. Were Ogutu

National General Secretary: Kenya Chemical and Allied Workers Union  
For Claimants

Mr. Henry Nyumba: Kenya Union of Commercial, Food and Allied Workers

For Interested Party

No appearance by Guram & Co. Advocates

during hearing on 24 and 26 September 2012.

For Respondent