



Keya Union of Pre-Primary Education Teachers v County Public Servie Board,Vihiga County Government & another; Salaries and Remuneration Commission (Interested Party) (Cause E007 of 2024) [2024] KEELRC 2223 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2223 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E007 OF 2024
JW KELL, J
SEPTEMBER 20, 2024**

BETWEEN

KEYA UNION OF PRE-PRIMARY EDUCATION TEACHERS CLAIMANT

AND

**COUNTY PUBLIC SERVICIE BOARD,VIHIGA COUNTY GOVERNMENT 1ST
RESPONDENT**

**COUNTY SECRETARY VIHIGA COUNTY GOVERNMENT 2ND
RESPONDENT**

AND

SALARIES AND REMUNERATION COMMISSION INTERESTED PARTY

RULING

On the Notice of Motion Application dated 11th April 2024

1. The application by the Respondents was brought under the provisions of Articles 50(1) and 159(2)(d) of *the Constitution*, Sections 1A, 1B & 3A of the *Civil Procedure Act* and the Employment and Labour Relations Court Rules, seeking the orders: -
 - a. Spent.
 - b. Until this application is finally determined and further or other orders issued, all other proceedings in the matter, save for this application shall be and are hereby stayed.
 - c. The Honourable Court does find and declares that Kenya Union of Pre-primary Education Teachers as a union and a Claimant in this cause is guilty of non-compliance in whole with the laws governing registration of trade unions at the national and branch level and their



recognition as such and therefore lacks the required legal capacity to represent pre-primary education teachers in Vihiga county or at all.

- d. The Honourable Court do find and declares that any strike or other industrial action called by Kenya Union of Pre-primary Education Teachers (KUNOPET) for Pre-primary education (ECDE) teachers in Vihiga County leading to the present litigation be and is hereby declared unlawful and or prohibited.
 - e. The present claim/suit having been instituted by or at the instance of Kenya Union of Pre-Primary Education Teachers (KUNOPET) which is found to lack the required locus standi be and is hereby struck out and or dismissed for being incompetent.
 - f. Costs of the proceedings shall be recovered from the Claimant.
2. The Notice of Motion was premised on the grounds on the face of the application and in the supporting affidavit sworn by Ezekiel Ayiego (County Secretary) on 11th April 2024 as follows: -
- i. That upon devolution, the county government took over the management of pre-primary schools and the county employed ECDE teachers to take charge of learning in the Pre-primary schools in the county. That the county of Vihiga has over 450 ECDE teachers engaged on contract of up to three years.
 - ii. That in 2023, the county decided to place all public officers on permanent and pensionable terms, a process that is been implemented progressively and some ECDE teachers have received their conversion letters to permanent and pensionable Terms.
 - iii. That county employees on a contract basis are entitled to gratuity benefits as pension which is administered by an independent service provider, to whom an employee is supposed to apply to be paid, and all that the county does is to clear an employee, but the county does not pay the gratuity, save for the remittance of the same to the said scheme provider.
 - iv. That the county under Governor Wilber K. Otichillo has been working to improve the working conditions of ECDE teachers and the teachers were added to the County Public Service Payroll in place of the top over remittance where they used to be paid when it was convenient.
 - v. That the county did not have any issues with the ECDE Teachers and if any, they were resolved immediately.
 - vi. That on 6th February 2024, the County Secretary received a notification (EA-1) from the Officer Commanding Station of Mbale Police Station that ECDE Teachers would be marching to the county on 8th February 2024 to present a petition in a peaceful protest organized by KUNNOPET who were purporting to be representing the ECDE Teachers.
 - vii. That it was then that they came to know of KUNNOPET as a union representing teachers and came to know that the ECDE Teachers had problems that they wanted the county to resolve.
 - viii. That despite not knowing that the ECDE teachers were in a Union which had not introduced itself to the county, the protesting ECDE Teachers were allowed to present their petition which was received by the relevant office.
 - ix. That before the county could address the concerns presented by the ECDE, they learned that the teachers had also proceeded to the County Assembly and presented the same petition.



- x. That the County Executive was summoned before the County assembly where they explained their position regarding the ECDE Teachers and the Assembly directed that the county and the teachers hold a meeting (EA-2)).
 - xi. That at the meeting at the assembly, they learned that the teachers were on strike and they had abandoned teaching. That the strike notice has never been served upon the county nor had the list of the unionized teachers been supplied to the county.
 - xii. That the county was not able to comply with the direction of the Assembly, as at the same time the county was served with the present claim.
 - xiii. That it is through the Court claim that the county learned that there was a conciliator appointed to resolve the dispute between the county and the Union that was never brought to the County's attention.
 - xiv. That from the claim in Court, there is no mention of the status of the registration of the union, its membership, or a recognition agreement with the county that had employed the ECDE Teachers.
 - xv. That as per the rule of law and *the constitution*, employees have the right to join a union and participate in its activities but the union must meet the legal thresholds and demonstrate so.
 - xvi. That since the union has not satisfied the legal threshold, it has no legal capacity to represent the teachers, to call a strike and to maintain the present suit.
 - xvii. That the union is in breach of Sections 12, 13, 14, 15, 19, and 23 of the *Labour Relations Act* and thus lacks the required capacity to maintain this suit and the right of the audience before the Court does not entertain lawbreakers and that the Court allow application and the orders sought and strike out the claim.
3. The Application was opposed by the Claimant/respondent through a replying affidavit sworn by Samuel A. Opiyo, who described himself as the General Secretary of the Claimant, sworn on 12th July 2024 stating that: -
- i. The application is brought under irrelevant provisions of the law as the Application seeks to stay the proceedings.
 - ii. That the issue of a Recognition agreement was referred by the Court to conciliation, and the Respondents refused to engage in the conciliation process maintaining that the union lacks moral standing in the conciliation.
 - iii. That the conciliator having considered the written proposals by the parties and relevant material issued a Conciliation report("A1") recommending that parties sign a recognition agreement after confirming that the Union has surpassed the simple majority threshold required for the recognition having recruited 764 out of a possible 800 ECDE teachers employed by the respondent.
 - iv. That despite the allegations by the Respondents that the Claimant is in breach of the law, it is indeed the Respondents who have failed to disclose to the Court that they commenced deduction of union dues in September 2023 until February 2024 as they were satisfied that the Claimant indeed was a registered union, with a deduction of union dues order vide Legal Notice, as well as a Certificate of Registration.



- v. That despite the respondents' assertion that the strike was unlawful, the 1st Respondent as the employer was duly served with strike notice(A2).
 - vi. That the assertion that the Claimant lacks locus for the Court is misconceived and without any legal underpinning.
 - vii. That the assertion by the respondents that the Claimant has failed to file their Registration Certificate has no basis as no order is in place directing the Claimant to file its Certificate, and in any event, In the first letter to the 2nd Respondent as relates deduction of union dues dated 5th June 2023(A3) all necessary documents including the union registration document was sent under cover of the said letter.
 - viii. That the aforesaid letter of 5th June 2023 which enclosed the Claimant's Certificate of Registration was received by one Roselyne Amiani, a staff at the office of the County secretary on 7th June 2023 at 9.43am as evidenced(A4)
 - ix. That the application ought to be dismissed for been frivolous and a waste of judicial time, given that the Respondents are on record for having staged a walkout from the Conciliation which was sanctioned by this Honourable Court.
4. The Court had earlier directed that this application be considered together with the Notice of preliminary objection of even date and of which a ruling was delivered on the 31st July 2024.
5. The Court in the said ruling of 31st July 2024 determined the Notice of Preliminary Objection only and with respect to the Notice of Motion stated:- ' 60. On the Notice of Motion application determination, the Court returns that serious issues have been raised on the legitimacy of the claimant. Taking into account the interest of the affected employees, the Court finds that it has to be satisfied on the locus standi of the Claimant first and stays any further proceedings in this suit and application pending its determination and final orders in the application dated 11th April 2024 on the following conditions:-
- 61. That pending any further proceeding in the claim and conclusive orders in the instant application, the Claimant is hereby Ordered to produce in Court the following documents as proof of its locus standi before Court:-
 - a. Certified copy of the Claimant's registration certificate by the Registrar of trade unions
 - b. Certified copy of the registered officials of the national office of the union and local branch (if applicable)and evidence of Samuel Opiyo as the General Secretary.
 - c. Certified copy of the registered union's constitution.
 - d. Letter of authorization of Samuel Opiyo by the Secretary General of the union to represent the Claimant in this Court.
 - e. Signed Check-off forms for employees of the 1st Respondent and letter of authorization to deduct.
 - 62. The Claimant is ordered to file and serve the above documents(a-e) within 30 days of this Order. The Court lists the matter for mention on the 17th of September 2024 to confirm compliance and for final orders under the application dated 11th April 2024. The final order in the ruling due today is vacated to 17th of September 2024 when the court will confirm the status of compliance by the Claimant with the above orders.



63. The above Directions and Orders to apply in the suit between the parties in Kakamega E009 OF 2024.
64. It is so Ordered. “
6. Pursuant to the foregoing directions, the Claimant filed supplementary affidavit sworn by Samuel A. Opiyo on the 29th August 2024 wherein he annexed the certificate of registration of the Claimant by the Registrar of trade unions dated 20th December 2012, an extract of the register of officials, committee members and trustees of the claimant union as at 21st August 2024 by the Registrar of trade unions and in which Samuel A. Opiyo was indicated as the Secretary General effective 14th March 2021, authority to deduct dues of Kshs. 300 from employees of the counties who are members of the claimant by the Cabinet Secretary for Labour and Social Protection dated 29th June 2021 and the registered Constitution of the Union. The Claimant also filed in court documents dated 10th September 2023 and 20th March 2024 all addressed to the Director of Human Resource for Vihiga County Government under which he annexed lists of members and check off forms for over 500 members.
7. The Court was satisfied on the compliance with its order by the Claimant. Further section 2 of the *Labour Relations Act* recognizes the secretary general as the representative of the union. The Act under section 2 defines “authorised representative” to mean— (a) the general secretary of a trade union;. In the instant case Samuel A. Opiyo is the registered Secretary general hence authorized representative of the claimant union to file suits on its behalf. Taking into consideration the evidence vide documents filed by Opiyo under his supplementary affidavit, on prima facie basis, the Court holds that the Claimant has locus to bring the claims before court as concerns labour relations between it and the respondents.
8. The Notice of Motion Application dated 11th April 2024 is held to be without merit and dismissed with costs in the cause.
9. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 20TH SEPTEMBER 2024

J.W. KELI

JUDGE

In the presence of

C/A Macheso

For Claimant: Samuel Opiyo

For Respondent: Aresa

