



**Kenya Union of Domestic, Hotels, Educational Institution and Hospital Workers
(Kudheiha) v Board of Management Lugulu Girls High School & another
(Cause E007 of 2025) [2026] KEELRC 233 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 233 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE E007 OF 2025
DN NDERITU, J
JANUARY 29, 2026**

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTION
AND HOSPITAL WORKERS (KUDHEIHA) CLAIMANT**

AND

**THE BOARD OF MANAGEMENT LUGULU GIRLS HIGH
SCHOOL 1ST RESPONDENT**

**THE SECRETARY TO THE BOARD OF MANAGEMENT, LUGULU GIRLS
HIGH SCHOOL 2ND RESPONDENT**

RULING

I. Introduction

1. The claimant filed a notice of motion dated 29th May 2025 (the first application) seeking for the following orders –
 - a. Spent.
 - b. That this hon. court be pleased to issue orders compelling the respondents to stop intimidation, coercion and unlawful suspension of workers due to an application filed by the claimant on behalf of the first respondent’s workers.
 - c. That the respondents stop any future punishments or attempts to punish in any form or manner the workers for filing an application in this honourable court in pursuit of their rights.
 - d. That the suspension letters issued to the workers be declared null and void, and that the workers be recalled back to their duties immediately.



- e. The costs of this sit be borne by the first respondent.
 - f. That the court may award any order it deems just and fit.
2. When the matter came up in court for directions on 13th June 2025, the respondents had filed a notice of motion of application dated 12th June 2025 (the second application), alleging that the claimant lacks the locus standi to file the first application. The court directed that the first application be held in abeyance pending the determination of the second application.
 3. In the second application the respondents are seeking for orders that –
 - i. The claimant’s suit against the respondents be struck out with costs.
 - ii. The costs of this application and the suit be awarded to the respondents/applicants.
 4. This ruling is therefore in regard of this second application.
 5. The application is expressed to be founded on Section 54(1) of the *Labour Relations Act* (2007) and Rule 45(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024. It is based on the grounds on the face of it.
 6. The application is supported with an affidavit of Dinah Cheruiyot, the principal of the school and the secretary to the 1st respondent, sworn on 12th June 2025, with several annexures thereto.
 7. In opposition to the application, the claimant filed a response dated 17th June 2025.
 8. By consent, the court directed that the application be canvassed by way of written submissions. Mr. Simiyu for the respondents filed written submissions dated 15th October 2025. The claimant did not file any submissions.

ii. Evidence

9. In the supporting affidavit, it is deponed that the claimant’s representatives and the 1st respondent entered into a recognition agreement to, among others things, negotiate terms and conditions of service of the claimant’s members.
10. It is deponed that the 1st respondent has 74 non-teaching staff, out of which the claimants’ members were only 33 and hence falling short of the simple majority required for the recognition of a union.
11. It is deponed that the claimant was fully aware that it had not met the simple majority yet, against the law, it held itself as a lawful representative of the employees.
12. It is further deponed that out of the 33 members registered with the claimant, 20 have so far withdrawn their membership with the claimant hence further reducing the membership far below the required simple majority and stripping the claimant of the capacity to file the claim, the first application, or any other proceedings purportedly acting for the majority of the employees.
13. It is deponed that the question of capacity of the claimant to represent the employees goes to the jurisdiction over and therefore the present application has no foundation in law.
14. In the response to the application, the claimant asserts that the membership of a union is grounded on the payment of the regular subscription fees as contemplated under Section 48(1) of the *Labour Relations Act* (LRA) and any employee who has paid their union dues is entitled to representation before any court.



15. It is deponed that Section 52 of LRA allows the remission of dues where employees are less than five in an institution, and the alleged fall in membership of the claimant in the 1st respondent does not impede the right of the claimant to represent the employees in court.
16. It is deponed that pursuant to Section 54(1) of the LRA, for collective bargaining to be done undertaken, an employer must first recognize a union, but absence of the collective bargaining agreement (CBA) cannot stop the representation of members in court by the union. It is asserted that in any event the respondent has already recognized the claimant.
17. It is stated that despite the respondents asserting that members of the claimant have resigned, the claimant is yet to receive any letters of resignation pursuant to Section 48 of LRA that requires the employer to forward any letters of withdrawal to the union.
18. The claimant asserts that its membership is intact as check-offs were signed by 45 of its members and remittance of dues is up to date as of May 2025.
19. It is further stated that the issue of withdrawal of membership is an issue subject to litigation and the union members have a right of representation before the court, even when it is a single member who is aggrieved.

Iii. Submissions

20. Counsel for the respondents submitted on two issues – Whether the claimant has capacity to act for/represent unionisable employees working for the respondent and, Whether the claimant lack of capacity to represent unionisable employees working for the respondent invalidates the claim herein.
21. On the first issue, counsel cited a plethora of decisions –

Kenya National Union of Nurses v St. Mary’s Hospital Mumias (2022) KEELRC 3787 (KLR), Kudheiha Workers Union v Board of Management Mwariki Secondary School (2022)KEELRC 1786 (KLR) and, Kenya Petroleum Oil workers Union v Nas Oil Kenya Ltd (2025) KEELRC 107 (KLR) in asserting that the claimant, pursuant to Section 54(1) of LRA, does not meet the threshold for recognition and thus does not have the legal standing to file the present suit.
20. It is submitted that the claimant at the onset did not meet the simple majority but held itself as if it possessed the requisite threshold and yet proceeded to enter into a recognition agreement with the respondents against the law.
21. On the second issue, counsel cited Kenya Union of Employees of Voluntary and Charitable Organisations (KUEVOCO) V Board of Governors & Maina Wanjigi Secondary School (2015) eKLR in asserting that with the claimant’s membership having fallen below the threshold required for recognition, despite the existence of a recognition agreement, the claimant has no locus to file a trade dispute in court.

Iv. Analysis & Determination

20. The court has carefully read and considered the second application, the affidavit in support, the response, and the written submissions by the respondents’ counsel, alongside all the cited authorities. The following issue commends itself to the court for determination – Whether the claimant has the requisite locus standi in filing the claim before the court.



V. Locus Standi

20. The respondents argue that the claimant lacks the locus to institute any suit against the respondents, alleging that the claimant's membership within the employees of 1st respondent has fallen below the simple majority, the threshold required for recognition. The respondents posit that the claimant unlawfully held itself as having acquired the simple majority, leading to the unlawful and un-procedural signing of a recognition agreement.
21. On the other hand, the claimant asserts that it has a valid recognition agreement with the 1st respondent and, in any event, should its membership have fallen below a simple majority, its right to represent its members is hinged on payment of the subscription fees, which it argues are all paid up to date by the 45 of its members working with the 1st respondent.
22. The court notes that all authorities relied on by the respondents relate to instances where there were no recognition agreements in place. In the present application, it is admitted that there is a valid recognition agreement in place between the both parties. The respondents have not asserted or proved they entered into the recognition agreement under duress and thus they are estopped from alleging and claiming that the claimant unlawfully led them into signing a recognition agreement. Presently, a binding recognition agreement is in place.
23. The claimants argue that the respondents have forced its members to withdraw from their membership and that is an issue before the court pending determination. It is the very membership which led to the signing of the recognition agreement that the respondent is objecting to.
24. The Court further notes that any dispute on the recognition agreement must first be referred to the Cabinet Secretary in charge of Labour for the conciliation process. A trade dispute is defined under Section 2 of LRA as –

‘trade dispute’ means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers’ organisation and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union.
20. Under Section 62 of the LRA disputes such as on recognition as raised by the respondents ought to be made to the Minister. The respondents ought to have exhausted the legal process under the LRA on the issue of recognition before invoking the jurisdiction of the Court.
21. The issue before the court is whether the claimant have the legal standing to file suit on behalf of its unionisable members. The cornerstone of the relationship between workers and unions is membership fees as envisaged under Section 48 of the LRA, to wit –

In this Part “trade union dues” means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.” It is this membership that gives the union locus to represent its members.
20. The claimant states that 54 of the 1st respondent's employees signed check-off forms and their subscription dues are up to date as of when this claim was filed. The respondents state that out of the 33 employees allegedly recruited by the claimant, 20 have so far withdrawn their membership. The claimant, conversely, asserts that it is yet to receive any resignations from the respondents, and that its membership with the employees of the 1st respondent currently stands at 45.



21. The court finds and holds that where employees have signed check-off forms and desire to join the union that right is protected under Article 41 of *the Constitution*. The court further finds and holds that the claimant has the requisite locus to institute these proceedings as long as the recognition agreement is in force.

22. The application by the respondents dated 12th June 2025 is hereby dismissed with costs in the cause.

Vi. Order

20. The court orders that –

- i. The application dated 12th June 2025 is hereby dismissed.
- ii. The claimant has locus to file the claim before the court
- iii. Costs in the cause.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT BUNGOMA THIS 29TH DAY OF JANUARY 2026.

.....

DAVID NDERITU

JUDGE

