



**Kenya Union of Domestics, Hotels, Educational Institutions and Hospitals
Workers v Board of Management Bunyore Girls High School (Cause
E005 of 2024) [2025] KEELRC 766 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 766 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E005 OF 2024
DN NDERITU, J
MARCH 13, 2025**

BETWEEN

**KENYA UNION OF DOMESTICS, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITALS WORKERS CLAIMANT**

AND

**BOARD OF MANAGEMENT BUNYORE GIRLS HIGH
SCHOOL RESPONDENT**

JUDGMENT

DIVISION - I. Introduction

1. In a memorandum of claim dated 18th March, 2024 filed in court on 20th March, 2024 the claimant herein (a trade union) filed this claim seeking the following reliefs –
 - a. That the respondent be compelled to commence collective bargaining negotiation with the claimant within fourteen days from when the judgment is given.
 - b. The respondent to conclude and register the agreement within thirty days from its commencement.
 - c. The claimant’s members working for the respondent should not be subjected to intimidation, coercion, or discrimination in any form or manner within their workplace.
 - d. The respondent to bear the cost of this suit plus the respondent to pay the claimant a total of one hundred thousand shillings for unwarranted delays caused and the amount used in trying to solve the matter before being filed in court.
 - e. The court to issue an order it deems just and fit.



2. As it is the procedure, the memorandum of claim was accompanied with a verifying affidavit, a list of documents, and copies of the listed documents.
3. The respondent entered appearance through the Attorney General and filed a statement of response dated 8th October, 2024 seeking for the dismissal of the claim with costs for lack of merit. On 30th October, 2024 the respondent filed the statement of Reverend Dr. George Magomere, a list of documents, and copies of the listed documents.
4. By consent, the claim was canvassed by way of written submissions. The claimant's representative, Mr. Oyata, filed his written submissions on 16th December, 2024 and Mr. Tarus, counsel for the respondent, filed on 22nd January, 2025.

II. The Claimant's Case

5. The claimant's case is expressed in the memorandum of claim, the filed documentary evidence, and the written submissions by its representative.
6. The claimant pleaded that it recruited 26 of the employees of the respondent representing more than half of the unionisable employees. It was further pleaded that there is a duly executed recognition agreement between the parties in line with the *Labour Relations Act* (LRA). Vide a letter dated 4th November, 2021 the claimant sent a collective bargaining agreement (CBA) proposal to the respondent containing 45 clauses for their perusal, and proposed a negotiation meeting to be held on 30th November, 2021. Documents in support of the foregoing are annexed as exhibits 1 to 4.
7. No response was received from the respondent and the claimant vide a letter dated 5th January, 2022 proposed a meeting before 31st January, 2022. Again, no response was received from the respondent prompting the claimant to vide a further letter dated 25th January, 2022 propose a meeting at the respondent's institution on 21st February, 2022 at 10.00 am.
8. It was pleaded that vide further letters of 27th June, 2022, and 6th September, 2022 the claimant requested the respondent to meet for negotiations for the CBA. On 6th October, 2022 when the representatives of the claimant went for a meeting with the respondent, they were informed that they would be invited to meet the finance committee of the respondent.
9. Vide a letter dated 1st November, 2022 the respondent invited the claimant to meet the finance committee on 10th November, 2022. Vide a letter dated 1st February, 2023 the claimant booked a meeting with the respondent for 6th March, 2023 as per an agreement between the parties that they were to meet in the first term. It is pleaded that on 6th March, 2023 when the claimant went for the meeting as agreed, the respondent's principal indicated that the claimant would be invited for a meeting in the second term. The claimant vide a follow-up letter dated 9th May, 2023 requested to meet the respondent's management on 31st May, 2023. The meeting did not take place on 31st May, 2023 as the respondent claimed that it was not ready.
10. Vide a letter dated 15th June, 2023 the claimant reported the matter to its Secretary General for purposes of declaring a dispute under Section 62 of the LRA. A dispute was declared vide a letter dated 27th June, 2023 and Mr. Nyerere Charles was appointed a conciliator vide the letter dated 25th July, 2023. Vide a letter dated 25th September, 2023 Mr. Nyerere's appointment was revoked and Mrs. Dorcas Ochieng Ouma was appointed in his place, after the chief industrial relations officer of labour established that the dispute arose in Vihiga and not in Kakamega.



11. The conciliator invited the parties for a meeting vide a letter dated 28th September, 2023 in her office on 11th October, 2023. The claimant sent its memorandum of dispute under cover of the letter dated 2nd October, 2023 as directed.
12. Vide a letter dated 19th October, 2023, the conciliator confirmed that the respondent had failed to attend the first meeting of 17th October, 2023 and slated another meeting for 31st October, 2023. The respondent sent its bursar who did not have the capacity to contribute to the matters in dispute and another meeting was slated for 12th February, 2024. The respondent did not show up for that meeting though duly notified and aware of the same. Subsequently, the conciliator issued a certificate of unresolved dispute dated 5th March, 2024 prompting this cause.
13. It is pleaded that since the respondent already recognized the claimant, the next step is the negotiation of a CBA for better terms and conditions for the members of the claimant. It is pleaded that the respondent's failure to negotiate a CBA after two years of attempted engagement infringes on the right to equal protection of the law under Article 27(1) of *the Constitution*.
14. It is pleaded that the right to fair labour practices encompasses a right to negotiate a CBA on behalf of members of a union, and the refusal by the respondent to negotiate has prompted the claimant to seek the intervention of the court.

III. The Respondent's Case

15. The respondent's case is contained in the statement of response, the statement by Rev. Dr. Magomere, the documentary evidence exhibited, and the written submissions by its counsel.
16. In the response to the claim, it was conceded that some of the employees of the respondent are members of the claimant and a recognition agreement was duly signed. However, it is pleaded that only 25 out of the 49 employees are members of the claimant comprising of less than half of the total workforce of the respondent. It is pleaded that the claimant had failed to reach the required threshold by failing to recruit more than half of the employees of the respondent which led the respondent's refusal to enter into negotiations with the claimant.
17. In his witness statement, Dr. Magomere, the chairperson of the respondent, disputed the existence of the recognition agreement adduced by the claimant dated 24th September, 2011 alleging that it does not bear the name of the person who signed the same on behalf of the respondent. He termed the same as fictitious.

IV. Submissions

18. Mr. Oyata, representing the claimant, submitted on two issues – Whether the respondent should engage in a collective bargaining agreement with the claimant; and, Whether the respondent should pay the cost of this suit.
19. On the first issue, it is submitted that under Section 54(1) of the LRA, an employer must recognize a union that represents a simple majority of its employees for purposes of collective bargaining. It is asserted that the right to collective bargaining is enshrined in Article 41(1) of *the Constitution* and Section 57 of the LRA.
20. It is submitted that the claimant attained the simple majority by recruiting 24 employees out of the 41 unionisable employees of the respondent. It is submitted that while the respondent has 58 employees, 17 of them are designated as teachers hence the employees eligible for membership with the claimant are 41. It is further submitted that there is a valid recognition agreement in place that was executed



upon the claimant recruiting a simple majority of the unionisable employees of the respondent. It is further submitted that the claimant is qualified for negotiations for a CBA with the respondent and the respondent should be ordered to commence collective bargaining with the claimant.

21. On the other hand, the respondent's counsel submitted that there is no binding recognition agreement in place between the claimant and the respondent, as no name appears against the signature of the alleged chairperson of the respondent in the agreement dated 24th September, 2011 making it fictitious.

V. Issues For Determination

22. The court has carefully and dutifully read through the pleadings filed, documentary evidence tendered from both sides, and the written submissions by or on behalf of both parties. The following issues commend themselves to the court for determination –
- a. Whether the claimant has met the threshold for recognition and whether a valid recognition agreement is in place.
 - b. Whether the claimant has made a case for the court to compel the respondent to commence negotiations for a CBA.
 - c. Who should bear the costs of the cause?

VI. Recognition

23. Section 54 (1) of the LRA provides as follows regarding recognition agreements –

An employer, including an employer in the public sector, shall recognize a trade Union for purposes of collective bargaining if that trade Union represents the simple majority of unionisable employees.

24. The respondent submitted that the claimant has not recruited a simple majority of membership from its employees. The respondent averred that from the total of 59 employees, the claimant had recruited only 25 employees.
25. The claimant on its part asserted that as per the contribution of dues list of October, 2024 it had recruited 24 out of the 41 unionisable employees. It was asserted that the 17 other employees appearing in the respondent's payroll for August, 2024 were teachers, and thus the claimant had already met the threshold for recognition and a valid recognition agreement was in place.
26. It is of course the claimant's position that teachers are unionisable under other trade unions and not the claimant. The claimant is a union mandated to represent domestic workers, non-teaching staff in schools, and workers in hospitals, and hotel establishments.
27. The respondent produced a payroll for August 2024, with a list of 18 teachers, and another with 41 non-teaching staff. The membership of the claimant is drawn from the non-teaching staff and they are 41. The claimant stated that 24 of the said 41 employees are its members as per its list of contributions for October, 2024 attached to its submissions. The list differs from that produced in the claimant's list of documents for contributions for October, 2023, which had 26 members.
28. The court has ascertained from the list of October, 2023 and October, 2024 that 22 of the said employees are employees of the respondent, except for Wellington Karakacha who does not appear in the respondent's payroll for October, 2024, and Joyce Olumula whose name does not tally with the names on the respondent's payroll. Evans Mudanya and Jacob Oboka who were in the October, 2023 list are also not listed in the October, 2024 payroll.



29. The respondent was thus wrong in arguing that its unionisable employees are 59 as the are 18 teachers are not unionisable with the claimant but with different unions.

30. The Court of Appeal in *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union* [2016] eKLR held as follows regarding recognition –

To be recognized as the representative trade union of the workers of a person or entity, Section 54 of the *Labour Relations Act* stipulates that the minimum number of workers willing to join the Union must be a simple majority or 51% of the workforce.

31. The court has ascertained that 22 employees out of the 41 unionisable employees of the respondent are members of the claimant. This represents 53.6% of the unionisable workforce that is above the 51% stated in the above decision. The court finds and holds that the claimant has therefore met the threshold for recognition.

VII. Recognition Agreement

32. The claimant produced a recognition agreement dated 24th September, 2011. The respondent in the statement of response first acknowledged the existence of the recognition agreement (see para. 2) but in a departure, through the statement by Rev. Dr. Magomere, it is alleged that the recognition agreement is fictitious for not bearing the name of the person who signed the same for and on behalf of the respondent.

33. The court has perused the documents exhibited by the claimant and noted that vide a letter dated 1st November, 2023 the respondent invited the claimant to meet with its Finance committee. There was no valid issue raised by the respondent on the validity of the recognition agreement. The respondent through its bursar appeared for the conciliation meeting on 31st October, 2023 on the subject matter of the dispute of the respondent's refusal to negotiate, conclude, and sign a CBA. The respondent did not raise a counter-dispute that the claimant had not met the simple majority threshold or that the recognition agreement was invalid.

34. The respondent alleges that the recognition agreement lacking the name of the signatory to the said agreement, the same is invalid. The agreement indicates that it was signed by the chairman of the respondent and bears a stamp impression of the respondent's school. The respondent has not contended the fact that the stamp belongs to it. The only allegation is that the same does not bear the name of the signatory. In any event what steps has the respondent taken to report any alleged forgery or fraud in regard to the execution of the recognition agreement? None. This clearly demonstrates male fide on the part of the respondent.

35. Section 54(6) of the LRA provides that – If there is a dispute as to the right of a trade union to be recognized for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII. (Emphasis added)

36. The respondent did not file any dispute on the recognition agreement or the recognition of the claimant before the conciliator. The issue of whether the claimant met the statutory threshold for recognition was only arisen before the court. That is clearly an afterthought on the part of the respondent.

37. The court finds and holds that even if the recognition agreement was to be deemed invalid, the respondent is mandated by Section 54(1) of the LRA to recognize the claimant having met the simple majority legal threshold.



38. The claimant has not proved any intimidation, coercion, or discrimination of its members by the respondent. The court urges the parties to maintain a peaceful and harmonious industrial relationship for the benefit of both sides and all the parties. That is the only way of guaranteeing productive engagement and healthy productivity from the employees.

VIII. Orders

- a. There is a valid recognition agreement between the parties dated 24th September, 2011.
- b. The parties shall negotiate and conclude a CBA within 60 days of this judgment.
- c. There is no order as to costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 13TH DAY OF MARCH, 2025.

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DAVID NDERITU
JUDGE

