



Kenya Union of Domestic, Hotels, Educational Institutions and Hospitals Workers v BOM-The Salvation Army-Kolanya Girls National School (Cause E003 of 2024) [2025] KEELRC 738 (KLR) (6 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 738 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE E003 OF 2024
DN NDERITU, J
MARCH 6, 2025

BETWEEN

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND HOSPITALS WORKERS CLAIMANT

AND

BOM-THE SALVATION ARMY-KOLANYA GIRLS NATIONAL SCHOOL RESPONDENT

JUDGMENT

I. Introduction

1. In a statement of claim dated 26th January, 2024 filed in court on 29th January, 2024 the claimant herein (a trade union) filed this claim seeking for the following reliefs –
 - a. That the honourable court in the spirit of social transformation through administration of justice compels the respondent the respondent to sign the forwarded recognition agreement to allow for negotiation of a Collective Bargaining Agreement pursuant to Section 54 *Labour Relations Act* 2007.
 - b. That the honourable court orders the respondent to deduct and remit union dues pursuant to Sections 48, 49 and 50 of the *Labour Relations Act*. It is evident that the respondent implemented the check-off system but blatantly stopped because the claimant had filed a case ELRC6 OF 2023. The same is evidenced by demand letters forwarded to the respondent from the claimant’s Head Office and Branch office requesting the claimant to deduct and remit union dues. The conciliator has also clearly indicated that union dues were stopped in June 2023. Your Ladyship, this is extremely offensive considering the fact that no member has resigned and the respondent purposely wanted to punish the claimant.



- c. That the honourable court directs the respondent to stop harassment, intimidation, and coercion the union members on the account of their union membership. Your ladyship, members of the claimant are under intense pressure to quit the union contrary to their wish. This is the highest degree of unfair labour contrary to CoK 2010 Article 41.
 - d. That the costs of this claim be awarded to the claimant.
 - e. Any other relief the court deems fit.
2. As it is the procedure, the statement of claim was accompanied with a verifying affidavit, a list of witnesses, a witness statement by Benard Wanjala Ombira, a list of documents, and copies of the listed of documents.
 3. The respondent entered appearance through the Attorney General and filed a response to the memorandum of claim dated 1st March, 2024 seeking for the dismissal of the claim with costs for lack of merits. On 30th July, 2024 the respondent filed an amended response to the claim of even date, accompanied with the statement of Gladys Nabiswa, a list of documents, and a copy of the listed document.
 4. By consent, the claim was canvassed by way of written submissions. The claimant's representative, Mr. Kamuye, filed his written submissions on 16th January, 2025 and Mr. Tarus for the respondent filed on 10th January, 2025.

II. The Claimant's Case

5. The claimant's case is expressed in the statement of claim, the witness statement by Benard Wanjala, the filed documentary evidence, and the written submissions by its representative.
6. The claimant pleaded that it recruited 38 members of the respondent's non-teaching staff who voluntarily filled out check-off forms. It was further pleaded that the claimant forwarded the said signed check-off forms accompanied with the authority to deduct and remittance of union dues signed by its secretary general with all the names and details of the recruited members.
7. It was pleaded that on 5th October, 2022 the claimant's secretary general forwarded a recognition agreement to the respondent following the recruitment of a simple majority of the respondent's non-teaching staff. It was pleaded that on 21st October, 2022, the claimant's branch secretary and organising secretary visited the respondent's school and with the approval and permission from the principal and Board of Management (BOM) educated its members on the role of the union. It is further pleaded that on the same day, the officials of the claimant informed the respondent that the next step would be the signing of a recognition agreement and the negotiation of a collective bargaining agreement (CBA).
8. It was pleaded that the respondent sought confirmation from the union members to commence deduction and remittances of union dues, which the union members confirmed by signing a list.
9. It was pleaded that the respondent commenced deductions and remittances until June, 2023 when the respondent's principal informed the union members that it would no longer deduct and remit deductions as the claimant had filed a suit for the respondent's refusal to sign a recognition agreement.
10. It was pleaded that the members of the claimant working with the respondent anonymously reported that the respondent was pressuring them to withdraw from the membership of the union.
11. It is pleaded that following a judgment delivered by court (Keli J.) the parties attended a conciliation meeting on 20th December, 2023 when the conciliation proceeded but during the meeting respondent



alleged that the claimant had to meet with its members to elaborate on their mandate despite the previous meeting held on 1st October, 2022. During the said meeting the respondent further alleged that the check-off forms had not been signed by the members.

12. It is pleaded that the conciliator in a report of 27th December, 2023 recommended that the claimant commence fresh recruitment which the claimant alleges fears that the same will be opposed by the respondent.

III. The Respondent's Case

13. The respondent's case is contained in the response to the statement of claim and the written submissions by its counsel.
14. In the response to the claim, it was conceded that indeed the court (Keli J.) delivered a judgment in Bungoma ELRC cause no. E006 of 2023 in which the court ordered the parties to proceed to conciliation.
15. It was pleaded that parties appeared before the conciliator who made recommendations that –
 - a. The claimant was to visit the school and educate the staff on union activities;
 - b. The claimant was to conduct fresh recruitment as the previous member lists were disputed;
 - c. The claimant was to ensure the respondent received the recognition agreement and understood it; and
 - d. If parties did not agree with the recommendation, they were at liberty to file a suit in court.
16. It is pleaded that the claimant failed to serve the respondent with a demand letter and thus not entitled to costs.

IV. Submissions

17. The claimant submitted that the conciliator erred in alleging that the check-off forms lacked signatures yet all forms had been signed by the members of the claimant.
18. It is submitted that pursuant to Articles 41 & 36 of *the Constitution*, every worker has a right to join a trade union in exercise of the right of association. It is submitted that the claimant attained the simple majority through recruitment drive under section 54 of the *Labour Relations Act* (LRA) it is entitled to enter into a recognition agreement and negotiate for a CBA.
19. It is submitted that the respondent has signed recognition agreements with many other unions and that the failure by the respondent to sign a recognition agreement jeopardizes the claimant's efforts to foster sound industrial relations through negotiations towards a mutual CBA. It is submitted that a CBA is only possible subsequent to a recognition agreement. It is further submitted that members of the claimant have worked under duress and intimidation after joining the union and the court is the last port of call for justice to prevail.
20. Counsel for the respondent submitted that the claimant did not meet the threshold under Section 54 of the LRA since the employees of the respondent who are reportedly the members of the are not more than 5% of the non-teaching employees of the respondent.
21. It is submitted that as per the list adduced by the claimant dated 30th July, 2024 seven employees of the respondent have since left the union as per the letters exhibited in court. It is submitted that the claimant recruited employees of the respondent as their members and the purported list of



authorization to deduct union dues is not recruitment. The deductions were subject to the claimant meeting the legal threshold in membership.

22. It is submitted that among the 38 employees allegedly recruited by the claimant, seven have since withdrawn their membership, five retired, and four are no longer members of staff of the respondent. It is submitted that the claimant has not proved that the respondent has either harassed or intimidated its members.
23. It is further submitted that the claimant indeed coerced the employees of the respondent into its membership. It is submitted that the claimant ought to follow the recommendations by the conciliator – conduct a fresh visit to the respondent’s school, educate the employees, and serve the respondent with a copy of the recognition agreement for study and execution.
24. It is submitted that the recommendations by the conciliator can amicably settle the dispute between the parties and the respondent cannot be compelled to sign a recognition agreement that is yet to be served upon it and afforded a chance to discuss the same.
25. The court is urged to dismiss the claim and order the claimant to follow the recommendations by the conciliator and conduct fresh recruitment drive to meet the threshold and jump-start the engagement with the respondent.

V. Issues For Determination

26. The court has carefully and dutifully read through the pleadings filed, documentary evidence tendered from both sides, and the written submissions by both parties. The following issues commend themselves to the court for determination –
 - a. Whether the claimant has met the requirements for deduction and remission of union dues?
 - b. Whether the claimant has satisfied the threshold for the court to compel the respondent to sign a recognition agreement?
 - c. Who should bear the costs of the cause?

VI. Union Dues

27. The claimant on its part avers that it submitted signed check-off forms, attendance list of members, and authority to deduct and remit union dues to the respondent. It is asserted that indeed the respondent commenced deductions as evidenced by the payment made vide the copy of the cheque exhibited by the claimant. It is stated that the respondent stopped the deductions and remittances in June, 2023.
28. The respondent has not addressed the issue of stoppage of deduction and remittance of union dues but only asserts that out of the 38 employees purportedly recruited by the claimant, seven non-teaching staff have left the union as per the withdrawal letters exhibited, five have retired, and four no longer work for the respondent.
29. Considering the respondent’s assertion that some employees as above indicated have left the membership of the union, the claimant is left with 22 members in the employ of the respondent. This assertion has not been rebutted or disputed by the claimant.
30. Deduction of union dues and recognition of a union by an employer are separate and distinct in law. Under section 48 of the LRA, an employer is bound to remit all union dues deducted to the union account of the union irrespective of existence of a recognition agreement as under this part, where there



are more than five employees in the membership of a union, the employer should make deductions and remit to the union.

31. The deduction and remittance of union dues from employees who have acknowledged union membership should be based on the Minister for Labour making an appropriate order through a notice in the Kenya Gazette indicating the account to which such union dues should be remitted. It does not require a recognition agreement between a union and an employer for that to be done. The duty of the union is to submit to the employer the names and identity of the employees through the check-off forms.
32. The claimant submitted check-off forms to the respondent with the names of the employees who had joined the union. The conciliator's report states that there is a contention on two lists as some lists have no signatures for the union to be recognised.
33. The issue of union deductions and recognition are separate and distinct as highlighted above. Further, the employees whose union dues were deducted by the respondent other than those said to have either resigned from the union or left the respondent's employ, have not alleged to have been forced to joining the union. In fact, the respondent commenced remittances of the deductions but then stopped.
34. The court finds and holds that the claimant has recruited more than five members in the employ of the respondent. Consequently, the respondent should henceforth deduct union dues from the salaries of the current and future members of the claimant and remit the same to the claimant's bank account as per the details provided.

VII. Recognition

35. Section 54 (1) of the LRA provides as follows in regard to recognition agreements –

An employer, including an employer in the public sector, shall recognise a trade Union for purposes of collective bargaining if that trade Union represents the simple majority of Unionisable employees.
36. The respondent submitted that the claimant has not recruited a simple majority of membership from its unionisable employees. The Respondent averred that from the total of 38 employees recruited by the claimant, seven withdrew membership, five retired, and four are no longer employed by the respondent.
37. The respondent submitted that the claimant should follow the conciliator's recommendation in the report dated 27th December, 2023 and commence fresh recruitment drive since some of the employees are said to have left the respondent school, that the lists exhibited by the union on different dates are contentious in that some do not have signatures, and the union was also asked to serve the recognition agreement upon the respondent and let the respondent understand it. The respondent thus argues that the claimant has not met the majority threshold for recognition.
38. The respondent's list of documents shows that a total of seven employees withdrew their membership with the claimant. There is no proof that five employees retired or that four employees left the service of the respondent.
39. Assuming that the claimant had recruited 38 unionisable employees in the employ of the respondent to its membership as at 28th January, 2022 as per the checkoff forms adduced, less those alleged to have either left the union, retired, or left employment, the remaining members out of 38 would be 22 unionisable employees. This number is above the 51% threshold required under Section 54 of the LRA. It stands at 57.9%.



40. 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.”
41. The conciliation report which the respondent has largely relied on, indicates that the conciliator found that the respondent was not willing to sign the recognition agreement with the union or to have any engagements with the claimant.
42. The court finds that the conciliator’s recommendation for the claimant to engage in fresh recruitment was unsupported on the contention that a list submitted by the claimant had no signatures, as the forms adduced by the claimant were all signed. The respondent did not exhibit forms alleged to be unsigned in support of the recommendation by the conciliator.
43. The court has considered the findings by the conciliator and holds that indeed the respondent is not willing to engage the claimant. The court finds and holds that the claimant has met the simple majority threshold required under Section 54 of the LRA for purposes of a recognition agreement and negotiation for a CBA.
44. Although the prayer to restrain the respondent from harassing, intimidating, and coercing the union members on the account of their membership with the claimant has not been proved, the court urges the parties to maintain peaceful and harmonious industrial relationship for the benefit of both sides.

VIII. Orders

- a. The respondent to deduct and remit union dues with respect of all its employees who have signed Form S apart from those who have withdrawn their membership.
- b. The respondent issue the claimant with a list and proof of those who have left the respondent’s employment whether through retirement, resignation or termination who were previously members of the claimant.
- c. The union dues be paid from April, 2025 failing which the respondent shall pay such union dues for such employees out of its own funds effective end of April, 2025.
- d. The parties shall negotiate in good faith and conclude the relevant recognition agreement not later than 30th April, 2025.
- e. There is no order as to costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT BUNGOMA THIS 6TH DAY OF MARCH, 2025.

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DAVID NDERITU
JUDGE

