



Kenya Union of Domestic Hotels, Educational Institution and Hospital Workers (KUDHEIHA) v BOM Matuu Memorial Girls High School (Cause E6474 of 2020) [2025] KEELRC 2181 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2181 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6474 OF 2020
DKN MARETE, J
JULY 23, 2025

BETWEEN

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

AND

THE BOM MATUU MEMORIAL GIRLS HIGH SCHOOL RESPONDENT

JUDGMENT

1. This matter arose out of a Memorandum of Claim filed on 18th November 2020. The issue in dispute is therein cited as;

“Refusal by the Board of management of Matuu HGM Girls High school to sign the recognition agreement contrary to section 54 of the *Labour Relations Act*, 2007.”
2. The Respondent in a Respondent’s Response to the Memorandum of Claim dated 14th November, 2024 denies the claim and prays that it be dismissed with costs.
3. The Claimant’s case is that it is a registered trade union and as recruited a simple majority (50% +1) of the Respondent’s unionisable employees between 2010 and 20th June 2014, thereby meeting the statutory threshold for recognition under Section 54 of the *Labour Relations Act*, 2007. The Claimant further states that it forwarded the Recognition Agreement to the Respondent on 13th October 2010 and made several follow-ups, including reminders dated 12th May 2011, 3rd February 2012, and 1st March 2017 (Memo of Claim, paras. 2.1–2.6). Despite these efforts, the Respondent refused to sign the Agreement, prompting the Claimant to report the dispute to the Ministry of Labour on 3rd May 2018 (Memo of Claim, para. 2.8). Conciliation meetings held on 30th August 2018 and 23rd April 2019 failed to resolve the dispute leading to the issuance of a Certificate of Unresolved Dispute (Memo of Claim, paras. 2.9–2.11).



The Respondent's Case is a Denial of the Claim.

4. The Respondent's case is that the Claimant union's membership has significantly declined since 2014 due to retirements, redundancies, and resignations (Respondent's Res to Memo, paras. 3–5). It is her further case that out of the five workers enlisted by the Claimant in 2014, two retired in 2017 one was declared redundant in 2021 and only two remains employed. Besides, the Respondent claims to have received nine handwritten letters from employees denying or withdrawing their union membership due to financial constraints (Respondent's Res to Memo, para. 3g). The Respondent argues that the Claimant no longer meets the 50% +1 threshold required for recognition under Section 54 of the *Labour Relations Act*, 2007.
5. The Claimant in its written submissions dated March 2025 reiterates that it recruited a simple majority of the Respondent's employees and complied with the statutory requirements for recognition. It cites Section 54(1) of the *Labour Relations Act*, 2007 which mandates recognition if a union represents a simple majority of unionisable employees. The Claimant further relies on Section 48 of the *Act* which authorizes the deduction and remittance of union dues and asserts that the Respondent unlawfully stopped these deductions in May, 2020.
6. The Claimant disputes the Respondent's claim that it lacks a simple majority, pointing to a list of employees dated 30th September 2024 which shows that 9 out of 12 workers are union members. It also references a check-off form signed by 14 employees on 10th November 2021 which the Respondent allegedly ignored. The Claimant argues that the Respondent's actions violate the employees' constitutional right to freedom of association under Article 41 of *the Constitution* and Section 19 of the *Employment Act*, 2007. In further support of its case, the Claimant cites *Kenya Engineering Workers Union v M/S Empire Glass Industries Limited* [2024] KEELRC 2734 where the court upheld the principle that an employer must recognize a union that meets the statutory threshold.
7. The Respondent in its written submissions dated 29th March, 2025 maintains that the Claimant has failed to meet the threshold for recognition under Section 54(1) of the *Labour Relations Act*, 2007. It emphasizes that the Claimant's membership has dwindled over time due to retirements, redundancies, and withdrawals leaving it with fewer than the required majority. The Respondent cites *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union* [2016] eKLR and *Kenya Electrical Traders & Allied Workers Union v Kenya Electricity Transmissions Company Ltd* [2021] eKLR, where courts held that a union must demonstrate a simple majority of unionisable employees to warrant recognition.
8. The Respondent further submits that the Claimant's reliance on outdated membership lists from 2014 is irrelevant as the current workforce of 13 employees includes nine who have denied or withdrawn their union membership. It distinguishes the present case from *Banking Insurance & Finance Union (Kenya) v Waumini Sacco Society Limited* [2018] KEELRC 585 where the union failed to meet the threshold, and asserts that the Claimant similarly falls short of this.
9. The central issue for determination is whether the Claimant has met the threshold for recognition under Section 54(1) of the *Labour Relations Act*, 2007 which requires a union to represent a simple majority of unionisable employees.
10. The Claimant relies on membership records from 2014 and check-off forms signed in 2021 asserting that it has consistently maintained a majority. However, the Respondent has demonstrated significant changes in the workforce since 2014, including retirements, redundancies, and withdrawals which have reduced the Claimant's membership. The Respondent's evidence, including nine handwritten letters from employees denying or withdrawing membership casts doubt on the Claimant's claim of a current simple majority.



11. The legal principle established in *Abyssinia Iron & Steel Limited and Kenya Electrical Traders* is clear: recognition is contingent on a union representing a simple majority at the time of the dispute. The Claimant has not sufficiently rebutted the Respondent's evidence of membership attrition.
12. The law appreciates and mandates the signing of a recognition agreement at the time of a simple majority. In the instance case this was as the times between 2010 – 20th June, 2014 as pleaded by the claimant. However, so much water has passed under the bridge. This is more so with claims of member attrition by way of retirements, redundancies, and withdrawals espoused by the Respondent. This creates an ugly situation that borders on unfair labour practices on the part of the Respondent. Ordinarily, a letter of resignation from a trade union should be addressed to the trade union and not the employer. The first point of call in this case should have been the claimant and not the Respondent. This is in the least, suspicious on the part of Respondent.
13. It is advised that the claimant partakes a fresh recruitment drive of the Respondent's employees with a view to obtaining a simple majority and therefore a signing of a recognition agreement. This should be without side shows or interference by the Respondent. A holding for the claimant may not in the circumstances make a lot of sense in the midst of such acrimony. Over to the claimant union.
14. I am therefore inclined to disallow the claim with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Miss Mwendwa for the Claimant's Union.

Miss Mochoge instructed by State Law Office for the Respondent.

