



**Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers
v Board of Management of Kapropita Girls High School (Employment and Labour
Relations Cause E048 of 2023) [2024] KEELRC 209 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 209 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E048 OF 2023**

HS WASILWA, J

FEBRUARY 13, 2024

**IN THE MATTER OF ARTICLES 36 (1) AND 41(1) & (2) (C) OF THE CONSTITUTION
OF KENYA 2010, SECTION 12 OF THE EMPLOYMENT AND LABOUR RELATIONS
COURT ACT 2011, SECTION 54 LABOUR RELATIONS ACT 2007 AND SECTION 7 (3) OF
THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES 2016**

BETWEEN

**KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS CLAIMANT**

AND

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

RULING

1. This Ruling is in respect of the claimant’s Application dated 29th September, 2023, brought pursuant to section 12 of the *Employment and Labour Relations Court* 2011 and section 7 (3) the Employment & Labour Relations Court (Procedure) Rules 2016, seeking for the following Orders; -
 1. Spent.
 2. Spent.
3. That this honorable Court do issue orders restraining the respondent from victimizing, intimidating, coercing, harassing, disciplining, terminating or otherwise discriminating the claimant’s members whose names appear on the check-off forms on account of their union membership, pending hearing and determination of the main suit.



4. That this honorable Court do issue orders compelling the Respondents to sign the Recognition Agreement without further delay.
5. That this Honourable Court do issue orders compelling the Respondents to commence CBA negotiation forthwith.
6. That this Honourable Court do issue orders compelling the Respondents to post-haste conclude and sign the Collective Bargaining Agreement without undue delay and/or postponement.
7. That the respondent to commence and continue Deduction and Remittance of Union Dues as per the check-off system to the claimant's bank account.
2. The Application is supported by the Affidavit sworn on 24th August, 2023 by Albert Njeru, the Secretary General of the claimant Union.
3. In his affidavit the affiant stated that the dispute before this Honourable court is touching on a Recognition Agreement where the Respondent has declined to formally accord the Claimant recognition.
4. He stated that on various dates between 26th February, 2020 and 26th May, 2022 the claimant recruited a total of 33 out of a possible 35 and 25 members out of a possible 34 respectively, that translated to 94 % representation in 2020 and 74 % representation in 2022, a percentage which is above the simple majority as required under Section 54(1) of the *Labour Relations Act*, 2007.
5. Subsequently that by a letter dated 15th December, 2022 the claimant sent to respondents a copy of the recognition agreement for their study, perusal and appending of the signatures but the Respondent did not respond to the said letter. Therefor that no meeting has been held for the purpose of signing the said Recognition Agreement and no such negotiations of the Collective Bargaining Agreement has commenced.
6. He contends that the claimant's recruitment of 94 % and 74% of the unionisable employees as its members suffice for the purposes of recognition by the respondent as mandated by section 54 (1) of the *Labour Relations Act*, 2007 but that the respondent has unjustifiably failed to accord the claimant Recognition.
7. It is averred that, the Claimant Union is the right sector trade union with respect to the respondent's institution and that the claimant has diligently addressed the respondent on matters Recognition Agreement in accordance with the provision of the Kenya constitution 2010 & *Labour Relations Act*, but still the Respondent did not find it necessary to recognize the claimant.
8. It is stated that the continuous uncertainty of signing the Recognition Agreement each passing day denies and delays the union members of benefits to be accrued from the Collective Bargaining Agreement.
9. The Affiant stated that the respondent's perfunctory intention will negate unionisable employees their constitutional right to trade union representation. Further that the Respondent's action of not fast-tracking the claimant's recognition amounts to unfair labour practice which is unlawful and unconstitutional
10. Conversely, that the Respondent has unduly influenced and coerced members of the claimant to withdraw from the union or face dire consequences not limited to termination of employment. Therefore, that unless this court grant orders sought, the claimant and her members will have their right to freedom of associations and right to fair labour practice infringed on.



11. Based on the foregoing, the affiant stated that it is fair and just that this Court issue the orders prayed sought.
12. From the record, the Respondent was served with the Application herein, the Court Order issued on 9.10.2023 and the Memorandum of claim on the 19th October, 2023 as evidence by the Affidavit of servicer sworn by Morris Linyonyi Ayiego, a licensed process server, but the Respondent did not enter appearance or filed a response to the Application herein as such the same proceeded unopposed.
13. Direction on the Application were taken on the 31st October, 2023 for the application to be canvassed by written submission, which Applicant filed on the 4th December, 2023.

Claimant/ Applicant's Submissions.

14. The Claimant submitted that it is a registered Trade Union under the Labour Relations Act No. 14 of 2007 Laws of Kenya operating as Kenya Union of Domestic, Hotels, Educational Institution and Hospital Workers while the Respondent is a Public Educational Institution Registered as Kapropita Girls High School as per the Basic Education Act 2013.
15. It was submitted that the claimant on various dates between 26th February, 2020 and 26th May, 2022 recruited a total of 33 out of a possible 35 and 25 members out of a possible 34 employees respectively, that translated to 94% representation in 2020 and 74% representation in 2022. That despite recruiting majority employees in the Respondent's employ, the Respondent has failed to recognize it and deduct union dues as required of it by Section 19 of Employment Act, 2007 and Section 48 of the Labour Relations Act, 2007.
16. It was argued that the dispute between the parties herein was subjected to conciliation, where the conciliator issued his report by the letter dated 1st February, 2023, where the conciliator concluded that the Respondent violated the provisions of the Labour Relations Act interfering with the rights of its employees to remain as members of the Union and by refusing to deduct Union dues with intention of leaving them without any representation. The conciliator then directed the Union to start deducting and remitting Union dues as stipulated by the law, that all arrears be charged on the account of the school and be paid to Union and he cautioned the Respondent from engaging in the bad practice.
17. The Applicant submitted that the failure by the Respondent to deduct Union dues and remit to the Union is in violation of section 19 of Employment Act No. 11 of 2007, Section 48 of Labour Relations Act 2007 and Article 41 of the constitution of Kenya 2010.
18. In light of the above, the Applicant urged this Court to grant the orders sought in the Notice of Motion dated 29th September, 2023.
19. I have examined all the averments and submissions as filed herein.
20. The applicant claimant have demonstrated that they recruited over 50% employees of the respondents and have indicated that the respondents have declined to accord them recognition and have resorted to intimidate those who have opted to join the union.
21. The respondents chose not to respond to the application and claim though served.
22. It is my finding that the applicant have established that they have a prima facie case with a probability of success.
23. The application is therefore merited and I allow it in terms of prayer 3 and 4.
24. Costs in the cause.



RULING DELIVERED VIRTUALLY THIS 13TH DAY OF FEBRUARY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

No appearance for parties

Court assistant – Fred

