



Kenya Union of Domestic Workers, Hotels, Educational Institutions and Hospital Workers Union (KUDHEIHA) v Board of Management - Sacred Heart —Mukumu Girls High School (Employment and Labour Relations Cause E019 of 2023) [2024] KEELRC 1015 (KLR) (16 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 1015 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
EMPLOYMENT AND LABOUR RELATIONS CAUSE E019 OF 2023**

JW KELI, J

APRIL 16, 2024

BETWEEN

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

AND

**BOARD OF MANAGEMENT - SACRED HEART — MUKUMU GIRLS HIGH
SCHOOL RESPONDENT**

JUDGMENT

1. The Claimant is a trade union registered and recognized under the Laws of Kenya to represent domestic workers, non-teaching staff in schools, non-medical workers in hospitals, and workers in the hotel industry.
2. The Claimant on 2nd November 2023 filed the Memorandum of Claim dated 31st 2023 supported by the Verifying affidavit sworn on even date by the Branch Secretary- Kakamega of the Claimant, Mr. Thomas Mboya.
3. The suit had been triggered by the Respondent’s refusal to negotiate and sign a Collective Bargaining Agreement (CBA). Vide the Memorandum of Claim, the Claimant has prayed for the following reliefs:-
 - a. That the respondent to be ordered to commence the collective bargaining negotiations within the next seven days from the date the judgment is issued.
 - b. That the collective bargaining negotiations should be concluded and it be registered within the next 45(forty-five) days from the date of commencement of negotiations.



- c. That the respondent to bear the cost of this suit.
 - d. That the respondent to pay the claimant a total of one hundred thousand shillings for causing unwarranted delays.
 - e. That the court to issue any other order it deems just and fit.
4. Also filed together with the Memorandum of Claim is the Claimant's list of Documents dated 31st October 2023 and its Bundle of Documents.
 5. The Respondent entered appearance on 22 November 2023 through the Hon. Attorney General, Principal State Counsel Stafford Nyauma, and on 18th January 2024 filed its Response to the Memorandum of Claim dated 17th January 2024 and its documents, through Senior State Counsel-Gilbert C. Tarus.

Claimant's Case

6. The Claimant states that on 7th May 2021, it recruited forty-one employees out of forty one (41) unionisable employees through check-offs No 001919 and 001920(App kw 2); which is the simple majority of unionisable employees, and through a letter of 27th May 2021, the Claimant's secretary forwarded the signed check-offs to the respondent for union deductions (APP KW 3). The respondent effected the check-off and duly commenced union deductions.
7. The parties voluntarily entered into the Recognition Agreement dated 24th January 2022(APP KW 4) under Section 54 of the [Labour Relations Act](#) (LRA), 2007.
8. That vide a letter of 30th May 2022, the Claimant forwarded a proposed Collective Bargaining Agreement (CBA) to the Respondent according to Section 57 of [LRA](#) requesting the Respondent to provide its counter-proposal accompanied with an invitation letter for CBA negotiations (APP KW5).
9. The Claimant on 27th July 2022, requested for the Respondent's Counter-proposal and invited the Respondent to a further CBA negotiations meeting of not later than 15th August 2022(APP KW 6). With no response received, the Claimant on 22nd September 2022 proposed to meet the Respondent's negotiators at the school on 25th October 2022(APP KW 7). On 25th October 2022, the claimant went to the school and was informed that the school principal was away and no arrangements for negotiations were in place.
10. Through a letter of 26th October 2022 the Claimant informed the respondent that they had been at the school, but the principal was away (app kw 8). Through the letter dated 28th October 2022, the respondent confirmed receipt of the Claimant's letter of 26th October 2022 and intimated that a Collective bargaining agreement would not be viable because of among other reasons, financial reasons (APP KW 9).
11. The Claimant on 14th November 2022 informed the Respondent that the 45 clauses of the CBA were not entirely on financial aspects and that failure to negotiate would prompt the Claimant to proceed to arbitration (APP KW 10).
12. That with no further response, the claimant reported a dispute to the Cabinet Secretary, Ministry of Labour under Section 62 of LRA vide the letter of 29th November 2011(APP KW 11).
13. A conciliator (Constance Muhadia) was appointed on 30th March 2023(APP KW 12), who through the letter of 17th May 2023 invited the parties to the first conciliation meeting of 8th June 2023(APP KW 13).



14. The meeting was rescheduled to 22nd June 2023, during which the claimant appeared, with no show by the Respondent.
15. The Conciliator, vide letter of 22nd June 2023, invited the parties to another meeting of 3rd July 2023 (APP KW 15). On 3rd July 2023, the parties were directed to give their position on the negotiation and revert by 10th August 2023 (APP KW 16).
16. The claimant in the letter of 26th July 2023 (APP KW 17) reminded the respondent on negotiations before the next meeting. The respondent responded through the letter of 2nd August 2023 (APP KW 18) informing the Claimant that they had closed school and the next Full Board meeting would be in the third term when the claimant would be invited for discussions.
17. The Claimant on 4th August 2023 in response reminded the Respondent of the decisions made before the conciliator for discussions to be conducted before the 10th August 2023 (APP KW 19).
18. On 10th August 2023, both parties met before the conciliator and agreed to meet and update the conciliator on the way forward on 27th September 2023 (APP KW 20).
19. The Claimant reminded the Respondent on 4th September of their pending negotiations (APP KW 21) and the Respondent responded on 14th September 2023 agreeing on setting up a date for the same (APP KW 22).
20. The Claimant states that on 27th September 2023, the conciliator issued a Certificate of Unresolved Trade Dispute confirming that the parties disagreed on the issues in dispute owing to the pending case between the parties before the court.
21. The Claimant states that having been recognized by the Respondent, the refusal to negotiate a Collective Bargaining Agreement infringes on the right to fair labour practices under Article 41 of the *Constitution* and Sections 54 and 57 of *LRA*.
22. The Claimant states that the Certificate of unresolved dispute stated in part “to enable either of the parties to move to the next level after both parties unanimously agreed to disagree on the issue in dispute due to an ongoing court case at ELRC Kakamega between them.”
23. The claimant states that the case referred to is ELRC No E014 of 2023 relating to the unprocedural termination of 8 employees who are members of the Claimant.
24. The claimant states that the Respondent believes that since the 8 employees are no longer in the respondent’s employ, then the claimant does not have the requisite simple majority to negotiate a CBA.
25. That the same is misguided since the total number of employees employed by the respondent is 41, with 33 being members of the Claimant and thus the unionisable employees are not less than the simple majority of (50 % + 1).

Respondent’s Case.

26. It is the Respondent’s case that it complied with all directions issued by the conciliator, save where an explanation for any non-compliance was given.
27. The Respondent states that delays and postponement of meetings were occasioned by the closure of schools, which was beyond the Respondent’s control.



28. The Respondent states that its Human Rights Welfare Committee indeed met on 8th August 2023 and prepared a counter-proposal contained in the minutes 2/8/23 (R1) and the counterproposal(R2) was shared with the claimant.
29. That on 13th September 2023, the Respondent's full Board mandated the relevant committee to set a meeting with the claimant's representatives for discussions on the CBA and parties met on 22nd September 2023 with the main agenda of "Discussing of Kudheih Workers CBA' as per the minutes (R3).
30. The Respondent states that during the said meeting the parties' attention was drawn to the pending ELRC Cause E014 of 2023 between the parties, which had been set for hearing on 12.10.23 and is now part heard.
31. That on the same date, parties resolved to defer the discussions on the CBA and agreed to meet at the Conciliator's on 27.9.23 for further directions.
32. It was when parties appeared before the conciliator, that the Conciliator issued the "temporary certificate of unresolved Trade Dispute" of 4.10.23(R4).
33. The Respondent states that, under the Certificate, the conciliator, recommended that the matter in court between the Union and the Management be concluded to pave the way for harmonious CBA negotiations which the conciliator believed both parties have goodwill for.
34. The respondent states that the Claimant instead of considering the Conciliator's recommendation, commenced the present suit in a hurry.
35. The Respondent states that paragraphs 32 to 35 of the claim are not applicable in the circumstances and there is no dispute so far between the parties to necessitate the court's intervention.
36. The Respondent states that the claimant is not entitled to the reliefs sought and the suit is an abuse of the court process meant to embarrass the Respondent.
37. That there is no cause of action against the respondent and pray that the suit be dismissed with costs.

Written Submissions

38. The court on 7th February 2024 directed that the claim be canvassed by way of written submissions. The Claimant's written submissions dated 20th January 2024 were filed by Michael Oyata, a representative of the Claimant on 22nd February 2024. The Respondent's written submissions dated 28th February 2024 were filed by Senior State Counsel, Gilbert C. Tarus on an even date.

Determination

Issues for determination

39. The claimant identified the following issues for determination in the claim: -
 - a. Whether the Board of Management of the Sacred Heart- Mukumu Girls High School should be compelled to negotiate and sign a collective agreement with the claimant.
 - b. Whether the respondent should pay the claimant the cost of the suit.
40. The Respondent identified the following issues for determination in the claim: -
 - a. Whether the Respondent have refused to negotiate the Collective Bargaining agreement.



- b. Whether the Claimant is entitled to the reliefs sought.
41. The court having considered the evidence placed before it and the parties' written submissions was of the considered opinion that the issues placed before it for determination in the matter were as follows:-
- a. Whether claim to compel the Board of Management of the Sacred Heart- Mukumu Girls High School to negotiate and sign a collective agreement with the claimant is merited.
 - b. Whether the Claimant is entitled to the reliefs sought.

Whether claim to compel the Board of Management of the Sacred Heart- Mukumu Girls High School to negotiate and sign a collective agreement with the claimant is merited.

42. The Republic of Kenya has ratified [*International Labour Organisation\(ILO\) Convention on Collective Bargaining Agreement*](#) of 1981(No 154). Article 2 defines the purpose of collective bargaining as follows:- ‘ For the purpose of this Convention the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for-
- (a) determining working conditions and terms of employment; and/or
 - (b) regulating relations between employers and workers; and/or
 - (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.’”
43. It was not in dispute that the parties have in place a recognition agreement (page 20 of the claim). The recognition agreement was signed and dated by the parties on the 24th January 2023(page 23 of the claim).
44. Section 54 of the [*Labour Relations Act*](#) provides that :- “(1) 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.”
45. The Respondent has already recognised the Claimant hence the next step under the law is for the parties to enter into collective bargaining whose purpose is as stated under article 2 of the Convention 154 (supra).
46. The parties appeared before the Conciliator who issued a certificate of unresolved dispute dated 27th September 2023(page 58) which stated:- ‘ I hereby issue a certificate of unresolved dispute in accordance with section 69(1) [*Labour Relations Act*](#) 2007 to enable either of the parties to move to the next level after both parties unanimously agreed to disagree on the issue in dispute due to an ongoing court case at ELRC Kakamega between them.’”
47. The same conciliator vide letter dated 4th October 2023 addressed to the parties and title, “Temporary Certificate of Unresolved trade dispute”. The Conciliator recommended that the dispute in court in E14 of 2023 be concluded for harmonious negotiation of CBA.”(R4).
48. The court finds the conduct of the Conciliator unprocedural for having issued earlier certificate on 27th September 2023. There was no legal basis to issue what he calls Temporary Certificate of Unresolved trade dispute which the court finds unknown in law. Conciliators in trade disputes exercise powers pursuant to the provisions of the [*Labour Relations Act*](#). Section 69 of the [*Labour Relations Act*](#) provides for unresolved trade dispute after conciliation: ‘ A trade dispute is deemed to be unresolved after conciliation if the— (a) conciliator issues a certificate that the dispute has not been resolved by



conciliation; or (b) thirty day period from the appointment of the conciliator, or any longer period agreed to by the parties, expires.” The Court finds that the Conciliator was out of order to issue the subsequent certificate dated 4th October 2023 which is not even signed by the parties.

49. The Court finds that there is no valid reason why the conciliation process stalled. The suit before the court has no impact on the recognition agreement between the parties the signing of which ignites the process of collective bargaining. The suit before the court is about terminations of services of employees represented in court by the union. That is within the lawful roles of the union.
50. The court for the foregoing reasons finds the Claim merited.

Whether the Claimant is entitled to the reliefs sought.

51. The Court held the Claim merited. The Respondent submits that the 7 days sought to commence the negotiations is not enough as the full board of management involved requires sufficient notice. What is sufficient notice? I would say sufficient notice is synonymous with adequate notice. Adequate notice under the Black’s Law Dictionary (10th Ed, Garner) is equated to due notice. “Due notice” is defined under the said dictionary as, “sufficient and proper notice that is intended to and likely to reach a particular person or the public”(Page 1227). In the instant case the notice to issue by the Respondent to call its Board of Management to negotiate is an internal issue. The court is of the opinion 15 days are sufficient for the Respondent to commence the collective bargaining sittings.
52. On the claim of costs sought based on the delays, the court noted that the conciliation stalled due to the misplaced advice of the conciliator. The court in pursuit of harmonious collective bargaining declines to make order for costs in the suit.

Conclusion

53. The Court in allowing the claim enters judgment for the Claimant by issuance of the following Orders:-
- i. The Respondent is ordered to commence the collective bargaining negotiations within 15 days from the date of judgment.
 - ii. That the collective bargaining negotiations should be concluded and the agreement registered within the next 45 (forty-five) days from the date of commencement of negotiations.
 - iii. Each party to bear own costs.
54. It is so ordered.

DATED, SIGNED & DELIVERED IN OPEN COURT AT KAKAMEGA THIS 16TH APRIL 2024.

J.W. KELI

JUDGE

In the presence of:-

Court Assistant: Macheso

For Claimant: Micheal Oyatta

For Respondent: - Simiyu h/b Tarus

