



Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers [KUDHEIHA] v B.O.M. Kilimani Primary School (Cause E535 of 2021) [2024] KEELRC 1553 (KLR) (21 June 2024) (Judgment)

Neutral citation: [2024] KEELRC 1553 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E535 OF 2021**

J RIKA, J

JUNE 21, 2024

BETWEEN

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND HOSPITAL WORKERS [KUDHEIHA] CLAIMANT

AND

B.O.M. KILIMANI PRIMARY SCHOOL RESPONDENT

JUDGMENT

1. The Claimant filed its Statement of Claim on 5th July 2021. The Claim is filed on behalf of 5 Teachers, members of the Claimant Union, who were employed by the Respondent.
2. Their names are not specifically given in the Statement of Claim. The Statement of Claim placed before the Court, is undated.
3. It is pleaded that the Respondent victimized the unspecified members, and failed to pay their salaries. They were offered new contracts, without payment of accrued benefits.
4. On 18th May 2021, the Respondent terminated the Teacher’s contracts, alleging that its Board was implementing government directive, on implementation of new curriculum. The Teachers are qualified, and registered with the Teachers Service Commission.
5. The Claimant avers that the Respondent’s intention in terminating the Teachers’ contracts, was to deprive the Claimant, trade union dues.
6. The Teachers were treated like casuals. They were underpaid. They were not issued sufficient notices of termination. They were not heard, in accordance with Section 41 of the *Employment Act*.
7. The Claimant prays for orders: -



- a. The Teachers are reinstated and paid damages in full.
 - b. They are paid notices.
 - c. Underpayments over a period of 3 years be redressed.
 - d. They are paid salary arrears.
 - e. The Respondent is sighted [sic] for an offence under Section 19 [5] [no Act].
 - f. The Respondent is compelled to refund and /or remit the N.H.I.F deductions that have never been remitted.
 - g. The Respondent be compelled to reinstate these workers to their jobs and in a circumstance [sic] where this is not viable the Respondent to pay all dues owed to the Claimants. [Claimant is a trade union].
 - h. That since the Respondent has never remitted N.S.S.F deductions, to be compelled to pay service gratuity if they are not to be reinstated.
 - i. The Respondent be stopped, and compelled from intimidating workers due to them practising their constitutional rights.
 - j. The Respondent be compelled to recognize the union and practice fair labour practices.
8. The Respondent filed its Statement of Response dated 15th June 2023. It denies knowledge of any of its Employees, being members of the Claimant Union. No Teacher's contract was terminated on account of association with the Union. The Respondent was not at any time, aware of its Teachers' union membership. The Respondent has always complied with N.S.S.F and N.H.I.F obligations. The Respondent states that it terminated the contracts of some of its Teachers, who were engaged on temporary contracts. The Respondent states that the Claim is ill-advised, and prays the Court to dismiss it, with costs.
 9. The evidence for the Claimant was given by Simon Manyengo on 30th June 2023, closing the Claimant's case. Board Chair Justus Namiti gave evidence for the Respondent on 27th February 2024, closing the hearing. The Claim was last mentioned before the Court on 3rd April 2024, when the Parties confirmed filing and exchange of their Submissions.
 10. Manyengo told the Court that he was testifying on behalf of a group of Teachers. He did not give details of these Teachers. He relied on affidavits, witness statements and documents, filed by the Claimant, in his evidence-in-chief. He told the Court that he and some other Teachers were employed by the Respondent, while others were employed by the Teachers' Service Commission [TSC]. The School Principal called a meeting, and told the B.O.M Teachers, that their services were no longer required. Their duties were assigned to TSC Teachers. The Government had adequately budgeted for B.O.M Teachers in public schools. Manyengo and his colleagues were fully qualified. They were being paid salaries in cash. There was no notice of termination. N.S.S.F contributions were not remitted.
 11. Cross-examined, he told the Court that he was employed by the B.O.M. He was interviewed. He did not sign a contract. He was advised that he would be issued a contract in due course. He was paid a starting salary of Kshs. 14,000 monthly. He was not told that he was on casual engagement.
 12. Justus Namiti relied on his witness statement dated 15th June 2023 and documents filed by the Respondent, marked A-F, in his evidence-in-chief.



13. Cross-examined, he confirmed that he was the Respondent's Board Chair. He was also, a parent at Kilimani Primary. He knew the Grievants. He did not know for how long they taught. They did not have written contracts. They were engaged verbally. The Respondent did not exhibit termination letters. The Respondent always remitted statutory dues. The Teachers' employment depended on availability of funds. He was not aware of money received from the Government, to finance B.O.M Teachers. It was not wrong for Teachers, to join Kudheihia.
14. Redirected, Manyengo told the Court that the Employees were casuals. They were engaged for 3 months, when the school was in session. During holidays, they did not have contracts. The Respondent did not employ in continuity.
15. The issues are whether the Claim has properly been pleaded or is ill-advised; whether the Claimant's members' contracts were unfairly and unlawfully terminated; and whether the various remedies pleaded are merited.

The Court Finds : -

16. The Claim is very poorly pleaded; the grammar is awful; and the cause of action, blurred and eventually lost, in the midst of the jumbled pleadings.
17. The Teachers on whose behalf the Claim is filed, are not named in the Statement of Claim filed on 5th July 2021. Their employment details, terms and conditions of service, are not known. Paragraph 3 of the Statement of Claim states that the dispute concerns the unfair termination of 5 B.O.M Teachers. Their names and details are not given.
18. Although there are 5 verifying affidavits, sworn by Pauline Ngonyo Mwaura, Beth Wanjiru Kimani, Marion Imbuka Siiva, Caren Narotso and Simon Manyengo, who identify themselves as B.O.M Teachers, the deponents are not named anywhere in the primary pleadings filed by the Claimant. The deponents of the verifying affidavits, are not mentioned in the Statement of Claim they are meant to verify.
19. The dispute went for conciliation before the Ministry of Labour. Rule 5 of the [Employment and Labour Relations Court \[Procedure\] Rules](#), 2016, was not observed by the Claimant, in filing the Claim.
20. The Rules requires that the Statement of Claim is signed by the authorized representative of the Claimant; and is accompanied by a report by the conciliator, supported by minutes of the conciliation meetings.
21. While the Statement of Claim is signed by the Industrial Relations Officer, presumably on authority of the authorized representative who in law is the General Secretary, the Statement of Claim is not dated, and the 5 documents filed by the Claimant on 5th July 2021, do not include the conciliator's report, and the minutes of conciliation.
22. Rule 5 [b] [ii] demands that the Statement of Claim shall be accompanied by a conciliator's certificate, issued under Section 69 [a] of the [Labour Relations Act](#). The certificate paves the way for litigation. The 5 documents filed by the Claimant with the Statement of Claim, do not include the conciliator's certificate.
23. The wording of the Statement of Claim, in particular the prayers, is unclear and inelegant, a mini tower of babel, making it very difficult for the cause of action to crystallize.
24. The Claimant prays the Court to find the Respondent guilty for a wage offence, under Section 19[5] of the [Employment Act](#). There is no criminal case, concerning any wage offence, prosecuted before the



Court, to permit the Court to convict and sentence the Respondent. Before the Court are proceedings of a civil nature, between a Trade Union and an Employer.

25. Prayer [1] on reinstatement is duplicated, under prayer [7]. Prayer [10] veers into matters that are not subject of the dispute. The Court is urged to order the Respondent to recognize the Claimant Union. There is no recognition dispute disclosed in the rest of the Pleadings. The Claimant pleads that the Teachers' contracts were terminated, in order to deny the Claimant trade union dues. Is the Claim about the Union and trade union dues, or genuine grievances by the Claimant's members, concerning termination of their employment? The Claimant also urges the Court to compel the Respondent to practice fair labour practices. What are these fair labour practices that the Court should order the Respondent to practice? Prayer [9] addresses constitutional rights of workers at large. The rights are not identified, and the workers are not identified.
26. The Claimant alleges that the Claim is brought on behalf of 5 Grievants. Only 1 alleged Grievant gave evidence. It was not indicated whether he had authority from the other Grievants to give evidence on their behalf. He said nothing about the other Teachers, and like in the Statement of Claim, did not give the names of his colleagues, or their terms and conditions of service.
27. While the Court would not use the term 'ill –advised,' as it has been invited by the Respondent to, in describing the Claim, it is quite clear that the Claim is poorly drawn, and improperly presented before the Court, in disregard of the Employment and Labour Relations Court [Procedure] Rules, 2016. The Claimant did not find it necessary, to as much as date the Statement of Claim before its filing, or file the basic conciliator's certificate.
28. The Claimant has not presented clear evidence, establishing that the contracts of its members were unfairly and unlawfully terminated by the Respondent. There was no proper evidence of the contracts, their presence and terms, and no evidence of unfair and unlawful termination. The Claimant just threw a Statement of Claim at the Court, with multiple grievances, and omnibus prayers. The parties who are actually aggrieved and their grievances, were not placed before the Court with a reasonable degree of certainty.
29. The Court is not able to assist the Grievants, based on the material placed before it by their Trade Union, the Claimant herein.

It is Ordered : -

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 21ST DAY OF JUNE 2024.

JAMES RIKA

JUDGE

