



**Kenya Union of Domestic, Hotels, Education Hospitals & Allied  
Workers v Board of Management Thika High School & another (Cause  
E6535 of 2020) [2024] KEELRC 13329 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13329 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6535 OF 2020  
CN BAARI, J  
DECEMBER 5, 2024**

**BETWEEN**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATION HOSPITALS &  
ALLIED WORKERS ..... CLAIMANT**

**AND**

**THE BOARD OF MANAGEMENT THIKA HIGH SCHOOL .. 1<sup>ST</sup> RESPONDENT  
THE PRINCIPAL/SECRETARY OF THE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling relates to the Respondents’ Preliminary Objection dated 3<sup>rd</sup> March, 2021, seeking dismissal of the Claimant’s claim on the premise that firstly, the Claimant lacks locus to file suit on behalf of the Respondents’ employees rendering the claim incompetent; secondly, that the prayer that the Respondents meet the Claimant’s claim through own funds, is vexatious and bad in law; and finally that the Respondents herein, cannot be sued as independent parties.
2. In the claim herein, the Claimant seeks that the Respondents be compelled to sign a Recognition Agreement, deduct union dues and/ or pay union dues owed to it with their own money.
3. The Claimant filed a response to the Preliminary Objection dated 22<sup>nd</sup> March, 2024. Parties sought to canvass the objection by way of written submissions, and submissions were filed for both parties.
4. In their submission, the Respondents submit that the Claimant lacks locus to file suit on behalf of the Respondents’ employees. It is their submission that lack of the requisite capacity to bring a suit goes to the root of the case, and without locus standi, the suit cannot stand.



5. The Respondents placed reliance in the case of Priscilla Jesang Koech -vs - Rebecca Koech & 30thers [2018] eKLR for the holding that:-

“Locus Standi is the cornerstone of any case, and before a party files a case, he or she must be certain that they are clothed with the requisite capacity to sue and be sued.”

6. They submit further that the test to be applied in considering whether a Trade Union should be granted recognition is as set out under Section 54 (1) and 54 {8} of the *Labour Relations Act*, 2007. It is their submission that firstly, the Trade Union must satisfy it has recruited a simple majority of the Employees it seeks to represent and secondly, the Trade Union must be relevant to the sector which the Employer operates in.

7. To support the foregoing proposition, the Respondents sought reliance in Industrial Court at Nairobi Cause between KUDHEIHA v. Commissioner for Higher Education [2013] eKLR, where the court cited the case of Confectionery, Food Manufacturing and Allied Workers Union(K) -vs - Mombasa Maize Millers Limited & 3 Others [2016] eKLR for the holding that:-

“...whether the Trade Union is the right Union to represent Workers in line with its Constitution; whether such Union has recruited a simple majority; whether there is a rival Trade Union claiming to represent the same Employees...”

8. The Respondents aver that they did not receive some of the check off forms and that those provided by the Claimant were questionable as they failed to capture the required statutory format and detailed information needed to allow any legal deduction.

9. It is their position that there was no recognition agreement between the Claimant and the Respondents, hence the Claimant has no right to appear for nor be heard by this honourable court nor be heard to lay a claim against the Respondents.

10. The Claimant opposed the Preliminary Objection raised by the Respondent, terming it a delaying tactics. It is its assertion that the *Labour Relations Act* mandates the trade union to refer the matter to the Honourable Court where the law is infringed.

11. The Claimant avers further that pursuant to the *Basic Education Act*, the Principal/Secretary BOM, is the head of the institution charged with the responsibility of Board of Management, and has authority over the non-teaching staff and the running of the institution.

12. It is the Claimant’s submission that the Respondents through the 2<sup>nd</sup> Respondent have denied the Claimant’s members right to freedom of association, frustrated them for unknown reasons and denied them their right to representation.

13. It is their prayer that the preliminary objection be struck out, and the application dated 9<sup>th</sup> December, 2020, be heard on priority basis.

### **Determination**

14. I have considered the objection, the response and the parties’ submissions. The issue for determination is whether the objection is merited.

15. The Claimant’s suit concerns recognition and deduction and remission of union dues. To be recognized, a union is by law required to recruit a simple majority of members from the service of the particular employer, while recruitment of at least 5 members entitles a union to deduction of



union dues. It is now settled that the purpose of recognition is to facilitate collective bargaining, while recruitment goes to representation.

16. The question of whether the Claimant union has recruited a simple majority of the Respondents' employees for purposes of recognition, or whether it has met the threshold for deduction of union dues, are issues of facts which can only be established on hearing the Claimant's claim.
17. In the case of *Mukisa Biscuits Manufacturing Ltd. v West End Distributors Ltd.* Civil Appeal No. 90 (1969) EA 696, the court set the threshold for a preliminary objections as follows: -

“A preliminary objection consists of a point of law which has been pleaded, or which arises from a clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

“A preliminary objection, is in the nature of what used to be called a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
18. Further, the Respondents' admission that they indeed received check-off forms from the Claimant, does go to confirm that they were aware that the Claimant had recruited members within its employ, which in itself gives the Claimant locus to sue on behalf of those members.
19. It is also true that the number of the Respondents' employees recruited by the Claimant is a question of fact, and which fact is in dispute and which similarly can only be answered in a full hearing.
20. In whole, I find the Respondents' Objection devoid of merit and is for dismissal. It is dismissed with costs in the cause.
21. Orders accordingly.

**DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER, 2024.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Hezron Onwong'a h/b for Mr. Mwendwa for the Claimant

Ms. Wachira h/d for Mr. Mungai for the Respondent

Ms. Esther S – C/A

