



**Kenya National Union of Nurses v Masinde Muliro University of Science and Technology
(Cause E014 of 2022) [2023] KEELRC 188 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 188 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE E014 OF 2022
JW KELI, J
JANUARY 26, 2023**

BETWEEN
KENYA NATIONAL UNION OF NURSES CLAIMANT
AND
**MASINDE MULIRO UNIVERSITY OF SCIENCE AND
TECHNOLOGY RESPONDENT**

JUDGMENT

1. The Claimant a duly registered trade union representing the interests of nurses within the Republic of Kenya filed the instant suit dated May 30, 2022 and received in court on the May 31, 2022 seeking the following reliefs against the respondent:-
 - a. An order directing the Respondent to sign a recognition agreement with the Claimant within 14 days of judgment herein.
 - b. An order directing the Respondent to continue deducting and remitting union dues in accordance with section 48 of the Labor Relations Act.
 - c. An order restraining the Respondent from harassing, intimidating and /or victimizing the members of the Claimant on account of union membership.
 - d. That the Respondent pay costs of this suit.
 - e. Any other order that the court deems fit to grant in the interest of justice.
2. The statement of claim was supported by the verifying affidavit sworn on May 30, 2022 by Stephen Ruteere who stated he was the claimant's industrial relations officer authorized to swear the affidavit. Also filed on even date was claimant's list of documents dated May 30, 2022 and the bundle of documents.



3. The Respondent entered appearance in the claim and filed its response dated 23rd June 2022 and received in court on the June 27, 2022.
4. On the September 26, 2022 the court issued directions that the suit be canvassed by way of written submissions. The parties complied.
5. The Claimant's written submissions drawn by Stephen Ruteere were dated September 27, 2022 and received in court on the September 28, 2022. The defendant's written submissions drawn by Gregory Ombito Advocate were dated November 23, 2022 and received in court on the November 25, 2022.

Claimant's Case In Summary

6. The Claimant claimed that it had between February and March 2021 recruited 19 out of 29 nurses who are members of the respondent's employees into their membership by way of check off which represented majority of all nurses under the employment of the Respondent and submitted the forms signed by the said employees to the Respondent for deduction of dues. That the Respondent on receipt of the check off forms deducted and remitted the dues. That the claimant then sought recognition agreement and meeting from the Respondent which was declined. The Claimant referred the matter to the Ministry of Labour declaring a formal dispute and a conciliator was appointed. That the conciliator called for a meeting of which the respondent did not attend leading to the conciliation report received by the claimant on the February 22, 2022 which recommended the recognition but the respondent failed to do so. The dispute remained unresolved as provided for under section 67 of the Labour Relations Act hence the instant suit.
7. The Claimant relied on the following documents filed with the claim:-
 - a. Copy of authority to act of Ruteere
 - b. Copy of the union's registration certificate dated April 19, 2013.
 - c. Copy of by – product dated December 6, 2021
 - d. Copy of letter dated April 27, 2021 received by the respondent on April 28, 2021 requesting for a meeting
 - e. Copy of draft recognition agreement received by the respondent on April 28, 2021
 - f. Copy of a letter reporting a dispute to the Ministry of Labour dated September 16, 2021
 - g. Letter appointing conciliator dated November 9, 2021
 - h. Copy of letter by conciliator dated November 10, 2021 inviting parties for a meeting and another dated December 17, 2021 rescheduling the meeting .
 - i. Copy of consent duly signed by both parties dated January 11, 2022
 - j. Certificate of dispute unresolved dated February 17, 2022
 - k. Copy of the conciliation report dated February 22, 2022.

The Respondent's Case

8. The Respondent's case in response was that the nurses who are employed as lecturers in its school of nursing made a request in May 2021 or thereabout for the respondent to deduct from their salaries and remit union dues and the management board granted their request with deductions effected in the subsequent month and remitted to the union. The Respondent admitted to a request



of meeting on the recognition agreement but advised the Claimant that the existing mechanism for concluding agreement for public universities is undertaken by the Inter Public Universities Councils Consultative Forum (IPUCCF) of the Federation of Kenya Employers(FKE)and relied on the recognition agreement between UASU and IPUCCF(MMUST1). That recognition agreements are jointly negotiated by IPUCCF so as to have common standards applicable to all public universities coherence in management of labour relations. The respondent states that the declaration of trade dispute lacked particularity and was best ambiguous. The respondent stated that it submitted itself to the conciliation process and filed its proposal(MMUST2). That at no point did the claimant seek for 30 days to initiate dialogue and annexed the proceedings of the said meeting (.MMUST3). The respondent stated that it was not invited for the meeting alleged to have been held on February 17, 2022. The respondent states that it advised the claimant to request for a recognition agreement to IPCCF as in the case with all other unions that have secured recognition agreements with public universities but the claimant choose to ignore the position leading to unnecessary labour dispute.

9. The Respondent states that the teaching staff who have joined the claimant union are also subscribing members of Universities Academic Staff Union (UASU) and enjoy terms of service negotiated by UASU creating duplicity of membership which is a source of conflict. That the nurses working in the university health care facility and clinic are not members of the claimant and have never made a request to join the claimant. That the members recruited by the claimant are respondent's teaching staff and not engaged in ordinary trade of a nurse as it is known.

Determination

Issues For Determination

10. The Claimant relies on the issues listed under its memorandum of claim being :-
 - a. Whether the claimant is entitled to be recognized by the respondent through signing of recognition agreement
 - b. Whether the orders sought ought to be granted
11. The Respondent identified the following issues for determination:-
 - a. Whether the claimant is entitled to be recognized by the Respondent through signing of recognition agreement.
 - b. Whether an employee can be a member of more that one trade union
 - c. Whether the orders sought can be granted.
12. The court having read the parties' pleadings and the written submissions was of the considered opinion that the issues placed by the parties before the court for determination of the dispute are as follows:-
 - a. Whether the claimant is entitled to be recognized by the Respondent through signing of recognition agreement and whether an employee can be a member of more than one trade union.
 - b. Whether the orders sought can be granted.



Whether The Claimant Is Entitled To Be Recognized By The Respondent Through Signing Of Recognition Agreement And Whether An Employee Can Be A Member Of More Than One Trade Union

Claimant's Submissions

13. The Claimant submitted that it was a registered trade union with mandate to represent nurses at both levels of government , private institutions and corporations. That between February and march 2021 it recruited 19 out of 29 nurses employed by the Respondents through signing of Form S which number represents simple majority at 66%.
14. That the Respondent received the form and deducted and remitted union dues (claimant's document 3 is the by-product).
15. That the Respondent refused to afford them recognition leading to conciliation process who report and certificate of dispute unsolved was produced as document No 11 and 12.
16. The Claimant did not file reply to the defence . The court did not place weight to the response on issues of advice or meetings under the submissions. Submissions are not pleadings.
17. The Claimant submitted that IPUCCF is an internal management system of the Respondent of which they had no prior knowledge of. That the responsibility to subject the claimant's demand to IPUCCF lay with the Respondent.
18. The Claimant relies on the conciliation report (document 13) which recommended the management to accord the claimant recognition.
19. The Claimant submits that it has met the criteria for recognition under section 54 of the *Labour Relations Act* having met the simple majority in recruiting 19 out of the 29 nurses in the employment of the Respondent. That nursing profession has its unique issues which can solely be understood by nurses. That nurses running the clinic offer nursing services on daily basis and are exposed to effects and hazards associated with the nature of practice and not limited to medical legal issues.

The Respondent's Submissions.

20. The Respondent admitted to having received the check off from the nurses who it stated were teaching staff an issue not controverted by the claimant. The Respondent further confirmed it deducted and remitted dues to the Claimant under the check off. The Respondent further stated the said nurses were members of UASU under whose CBA terms following recognition (MMUST1) they enjoy a position not controverted by the Claimant.
21. The Respondent submits that section 54 (1) and (2) of the *Labour Relations Act* presents a fundamental distinction on the issue of simple majority. To buttress this position the respondent relies on the decision in *Kenya union of Domestic Hotels and Educational Institutions Hospitals & Allied Workers (KUDHEHLA) v British Army Training Unit Kenya* (2015) eKLR where the court stated:-

‘Recognition is qualified here. Recognition of a union for purposes of collective bargaining is on condition that a union , first represents the simple majority and secondly such majority is from unionisable employees. The two most work together.’



22. The Respondent further relied on the decision in *Kenya Union of Commercial Foods And Allied Workers v Attorney General & another* (2021) eKLR where the court stated:
- ‘The statutory principle of simple majority is not without a purpose. It facilitates orderly conduct of collective bargaining within the industry , it reduces the risk of the proliferation of trade unions in the workplace. It enhances industrial peace.’
23. The Respondent submits that it had been deducting and remitted union dues to the claimant since approval to date. That the act of deduction and remitting union dues does not require a recognition agreement as the two are different issues in law as was held in *Kenya union of Domestic Hotels and Educational Institutions Hospitals & Allied Workers (KUDHEHIA) v British Army Training Unit Kenya* (2015) eKLR.
24. On whether the employee can be a member of more than one trade union, the Respondent submits that Article 41 of the *Constitution* provides for the right to fair labour practices. That the employees in question, that the Claimant is basing its claim are members of universities academic staff and enjoy benefits of CBA negotiated and registered in Employment and Labour Relations Court Nairobi CBA No 1 of 2020 *Inter Public Universities Councils Consultative Forum of The Federation of Kenya Employers v Kenya union of Domestic Hotels and Educational Institutions Hospitals & Allied Workers (KUDHEHIA) and 4 others*.
25. The Respondent submits that an employee cannot be a member of more than one trade union. To buttress this submission the respondent relied on the decision in *Kenya National Union of Nurses v Kenyatta National Hospital Board & 21 others* (2018) eKLR where the court stated:-
- ‘.. furthermore ,an employee cannot be a member of more than one trade union as would be implied by the letter written to the 1st respondent by the interested party..’. The respondent further relies on holding in *Kenya Union of Commercial Foods And Allied Workers v Attorney General & another* (2021) eKLR where the court stated that , ‘ allowing multiple unions to be recognized by an employer would a recipe for chaos..’
26. The Respondent submits that there is already a recognition agreement between UASU and IPUCCF which is valid and the claimant had said nothing on the matter nor have they distinguished and shown its place in the sought recognition.

Decision of the court.

27. The *Labour Relations Act* under section 54 provides for recognition agreement process as follows:-

"54. Recognition of trade union by employer

- (1) An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.
- (2) A group of employers, or an employers’ organization, including an organization of employers in the public sector, shall recognize a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers’ organization within a sector.



- (3) An employer, a group of employers or an employer's organization referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organization recognizes a trade union."

28. It was the Claimant's case that it recruited 19 out of the 29 nurses employed by the respondent and produced by-product to prove deduction of union dues. The respondent admitted that it received Form S and proceeded to deduct and remit the union dues for the listed staff which it has been doing to date. The issue in contention was that the staff recruited by the claimant were teaching staff under UASU and not employed as nurses at the clinics. The claimant did not file response to this issue raised under statement of response. The position that the recruited staff were academic staff remained uncontroverted.

29. The Respondent stated in defence that these staff recruited by the claimant were already members of UASU which had recognition agreement (MMUST1) and had concluded a collective bargaining agreement as adopted in Employment and Labour Relations Court Nairobi CBA No 1 Of 2020 *Inter Public Universities Councils Consultative Forum Of The Federation of Kenya Employers v Kenya union of Domestic Hotels and Educational Institutions Hospitals & Allied Workers (KUDHEHIA) and 4 others*. That the recruited staff were enjoying benefits under the said CBA which was valid.

The court agrees with the position taken by Justice Maureen Onyango in *Kenya National Union of Nurses v Kenyatta National Hospital Board & 21 others* (2018) eKLR where the court stated:-

'.. furthermore ,an employee cannot be a member of more than one trade union as would be implied by the letter written to the 1st respondent by the interested party..".

30. The claimant submits that nurses face hazards that only be addressed by nurses. The respondent stated in defence that the recruited members were teaching staff not working as nurses. I find in the circumstances that the said teaching faculty do not face any unique clinical hazard. They are just like the teaching staff for biology and chemistry subjects. In any event their interests as teaching staff was already negotiated and covered under the signed CBA adopted in Employment and Labour Relations Court Nairobi CBA No 1 of 2020 *Inter Public Universities Councils Consultative Forum Of The Federation Of Kenya Employers v Kenya union of Domestic Hotels and Educational Institutions Hospitals & Allied Workers (KUDHEHIA) and 4 others*. There was no evidence that the recruited staff resigned from membership of UASU.

The court finds and determines that recognition of the claimant by the respondent was not justified and was bound to cause chaos in the management of the respondent University. That can never be the intention of this court which aims to foster industrial relations.

Whether The Claimant Is Entitled Reliefs Sought

31. Having found the recognition was not justified and the respondent having complied the with the deductions under Form S consistent with the provisions of section 48 of the *Labour Relations Act* and Article 41 of the *Constitution* and there being no evidence before court of harassment of the recruited members, the court finds the claim unjustified and the entire claim is dismissed.

32. Each party to bear own costs.

33. It is so ordered.

DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 26TH JANUARY, 2023.



J. W. KELI,

JUDGE.

In The Presence Of:-

Court Assistant : Brenda Wesonga

Claimant:- Nyambura holding brief for Ruteere

Respondent: Ombito holding brief for Tarus.

