



Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Management of Bondo Teachers Training College (Cause E020 of 2022) [2023] KEELRC 613 (KLR) (15 March 2023) (Judgment)

Neutral citation: [2023] KEELRC 613 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E020 OF 2022
S RADIDO, J
MARCH 15, 2023

BETWEEN

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

AND

MANAGEMENT OF BONDO TEACHERS TRAINING COLLEGE RESPONDENT

JUDGMENT

1. The Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (the Union) sued Bondo Teachers Training College on 6 April 2022 and it stated the Issue in Dispute as:
Refusal to remit union dues contrary to section 19(f), (g) & (i) of the *Employment Act*, 2007 read alongside section 48 of the *Labour Relations Act*, 2007 and Ministerial directive on Legal Notice No. 195 by the Ministry of Labour and Social Protection.
2. Despite physical service of Notice of Summons and Memorandum of Claim on 14 April 2022 and courier service by Fargo Courier Ltd on 16 May 2022, the Respondent did not bother to enter appearance or file a Response.
3. On 23 May 2022, the Court directed the parties to appear for conciliation before the County Labour Officer.
4. In a report dated 6 December 2022, the County Labour Officer indicated that the Respondent had failed to appear for conciliation.
5. The Court, therefore directed that the Cause proceeds to formal proof on 13 February 2023.



6. When the Cause was called for hearing on 13 February 2023, the Union opted not to call or lead any evidence, but rather to file submissions.
7. The submissions were filed on 13 February 2023.
8. The Court has considered the record and submissions.
9. Where a party opts not to call a witness and decides to rely on the record and submissions, the party should ensure that there is affidavit of evidence on record deposing to the facts and documents relied on.
10. In the instant Cause, the Union filed an affidavit sworn by Doreen Nyasio, a Branch Secretary.
11. In the affidavit, it was asserted that the parties have a recognition agreement since 2015, and that the Respondent had commenced deduction of union dues but abruptly stopped in 2018 without any explanation.
12. The affidavit did not however compute the union dues the Respondent had failed to deduct and remit.
13. It is only in the submissions that the Union indicated that the outstanding union dues amounted to Kshs 471,240-.
14. With respect to the Union, it should have led evidence on how it arrived at the figure. The proof of the figure was a matter of evidence which could not be sneaked in through or with the submissions.
15. The Court also notes that the Union did not exhaust the dispute resolution mechanisms outlined in Part VIII of the *Labour Relations Act*, 2007.
16. The Court, therefore, directs the County Labour Officer, Kisumu to conduct an inquiry and establish the outstanding union dues and file a report with the Court within 45 days.
17. The report should include name of employee, date of employment and status of employment as of 6 April 2022, when the Union sued the Respondent.
18. The Court will give a mention date for further directions after the delivery of this judgment.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 15TH DAY OF MARCH 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr Okwach, Industrial Relations Officer

Respondent did not participate

