



Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Shanzu Teachers College (Cause E015 of 2023) [2023] KEELRC 1263 (KLR) (18 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1263 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E015 OF 2023**

**M MBARÚ, J
MAY 18, 2023**

BETWEEN
**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS CLAIMANT**
AND
SHANZU TEACHERS COLLEGE RESPONDENT

RULING

1. The ruling herein relates to the objections made by the respondent, Shanzu Teachers College who filed Notice of Preliminary Objections with regard to the claimant's application dated March 21, 2023 on the grounds that;
 1. The claimant has no *locus standi* to file the suit herein as an aggrieved party
 2. The claim in its entirety is fatally defective and instituted against the wrong party/respondent as the respondent is a non-juristic person, thus incapable of being sued in its own capacity.
 3. The claimant has sued the wrong party in this case as the remedies it is seeking cannot lie against the respondent
 4. The claimant's cause is to that extent incompetent, bad in law, fatally defective and otherwise an abuse of the court process and ought to be dismissed with costs to the respondent.
2. The respondent submitted that the claimant has no standing to make this claim because there is no sufficient interest to sustain standing to file suit. There is no employer-employee relationship. The claimant is seeking compelling orders to have the respondent sign a collective agreement (CBA). The CBA dated September 19, 2013 is not binding as there has been new developments and changes over the years making the Recognition Agreement nonbinding. The claimant's union members have



- drastically reduced and now stands at 23 out of 64 employees which is 36.5% and hence lacks simple majority representation and hence is without sufficient standing to file suit.
3. The respondent's employees are remunerated per the civil service salary scale set by the Salaries and Remuneration Commission (SRC) and hence bound by directives from Treasury and cannot sign a CBA with the claimant outside such government requirements. To sign a CBA at this instance would be an act in futility and cause conflict of interest as it would be against the advice from the government and SRC.
 4. Section 54(4) of the *Labour Relations Act*, 2007 (the LRA) requires an employer to recognise a trade union with a simple majority which the claimant is lacking and the suit should be struck off. In the case of *Tabitha Njambi Chigua & 12 others v County Government of Kiambu* [2016] eKLR the claimants were found to have sued the wrong party, the County Public Service Board and the suit was dismissed.
 5. The claimant submitted that at the time the Recognition Agreement was signed there was simple majority threshold achieved under the LRA and its members in the employment of the respondent have withdrawn such is at the instance of the respondent so as to frustrate the CBA negotiations. In the case of *Kenya Chemical & Allied Workers Union v Milly Glass Works Limited* Cause No 421 of 2017 the court held that at the time of negotiating a CBA the issue of number of union members is not the issue.
 6. The employees in the service of the respondent have not been shown to be remunerated within the SRC guidelines or that there are written communications to stop negotiations. The claimant has peers to the respondent with whom they have negotiated CBAs and the objections made by the respondent should be dismissed with costs.
 7. On March 7, 2023 the claimant filed suit and the issue in dispute is the refusal by the respondent to commence and conclude CBA negotiations. The objections are that the claimant has no standing to file the claim, the respondent is a nonjuristic person and that it is a wrong party to be sued and hence the claim should be dismissed.
 8. The claimant has defined itself as a registered trade union under the provisions of the LRA and attached the Recognition Agreement and CBA with the respondent which is appreciated by the respondent in the submission that it is dated September 19, 2013.
 9. The recognition of a trade union by an employer is a lawful process in terms of Section 54 (2) of the *LRA* upon the trade union achieving simple majority membership within the unionisable employees. Upon recognition, the trade union attains a very important status allowing for CBA negotiations.
 10. It is not in dispute that the parties have a CBA and the suit relates to failure by the respondent to engage in negotiations for a new CBA.
 11. Once an employer has recognised a trade union, whether the membership diminishes or not, the Recognition Agreement stands unless there is invocation of Section 54(5) of the *LRA* which directs that;
 - (5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.
 12. The Board contemplated in this case is the National Labour Board.
 13. It is therefore not sufficient for an employer to cite that the trade union has lost members, a Recognition Agreement once achieved, engagement to have it revoked is first with the Board. Before



an employer can invoke the provisions of Section 54(5) of the [LRA](#), negotiations of a CBA with the recognised union is imperative

14. Section 54 of the [LRA](#) provides that;

54. Recognition of trade union by employer

- (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.
- (2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise 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' organisation within a sector.
- (3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.
- (4) The Minister may, after consultation with the Board, publish a model recognition agreement.
- (5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.
- (6) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.
- (7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.
- (8) When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister.

15. Under Section 54(5) of the [LRA](#) it is the employer to apply to the Board to terminate or revoke a Recognition Agreement. The trade union cannot be stopped from seeking to re-negotiate a CBA where one exists and the subject employer has recognised the trade union, the terms of the CBA are negotiable under the law. See [Kenya National Union of Teachers \(Knut\) v Nancy Njeri Macharia & another](#) [2020] eKLR.

16. The claimant reported the dispute to the Minister through notice dated May 30, 2022 and on November 9, 2022 a Certificate of unresolved dispute issued in terms of Section 69 of the [LRA](#) and in this regard, the claimant is well within its rights to move the court and has proper standing and the respondent with whom a CBA exists is a proper party to be sued.

17. The claim by the claimant shall be addressed on the merits



18. Accordingly, objection made and dated March 17, 2023 are hereby found without merit and are hereby dismissed with costs to the claimant.
19. The respondent is given 14 days to comply with Rule 13 of the *[Employment and Labour Relations Court \(Procedure\) Rules, 2016](#)*.

DELIVERED IN OPEN COURT AT MOMBASA THIS 18TH DAY OF MAY, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and

