



Kenya Medical Practitioners, Pharmacists and Dentists’ Union v Kenya Hospital Association trading as the Nairobi Hospital; Cabinet Secretary Ministry of Labour & Social Protection (Interested Party) (Employment and Labour Relations Cause E860 of 2022) [2023] KEELRC 2078 (KLR) (24 August 2023) (Judgment)

Neutral citation: [2023] KEELRC 2078 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E860 OF 2022**

MN NDUMA, J

AUGUST 24, 2023

BETWEEN

KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS’ UNION CLAIMANT

AND

KENYA HOSPITAL ASSOCIATION TRADING AS THE NAIROBI HOSPITAL RESPONDENT

AND

CABINET SECRETARY MINISTRY OF LABOUR & SOCIAL PROTECTION INTERESTED PARTY

JUDGMENT

1. The claimant union filed suit vide a Memorandum of Claim on November 23, 2022 against the Nairobi Hospital and Cabinet Secretary Ministry of Labour and Social Protection seeking for the following reliefs:-
 - (i) A declaration and or finding that the claimant represents the simple majority of unionisable employees.
 - (ii) An Order that the parties negotiate and execute a Recognition Agreement within Thirty (30) Days of granting of Prayer (1) above.
 - (iii) A declaration and or finding that the Respondent’s action of failing to recognise the claimant was wrongful and illegal and amounted to unfair labour practice contrary to Article 41 of the Constitution.



- (iv) An order as to costs of this suit.
 - (v) That the Honourable Court do make any such further order it deems fit to grant.
2. The suit is premised on facts set out in the witness statement of the Davji Bhimji Attellah the Secretary General of the claimant union in which he deposes that the claimant is a registered union of Medical Practitioners, Pharmacists and dentists and represents a simple majority of the 1st respondent's unionisable employees.
3. That the claimant presented a duly signed Form 'S' demonstrating that it has recruited a simple majority of the respondent's unionisable employees to the employer coupled with a request for the employer to recognise the union in terms of Section 54(1) of the [Labour Relations Act](#), No. 14 of 2007 which provides:-
 - "(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."
4. The claimant states that it recruited 85 unionisable employees who comprise 60% of all the unionisable employees of the hospital.
5. That by a letter dated July 29, 2021, the Chief Executive Officer of the hospital wrote to the claimant stating that upon review of the contracts of the draft recognition agreement and having considered the employees whose interest, the union intends to represent, it had found that the number of staff the union intends to represent are approximately 14% of the total unionisable employees. The hospital Chief Executive Officer stated that the union had not satisfied the threshold set under Section 54(1) of the [Labour Relations Act](#), 2008 to warrant recognition by the hospital.
6. That the claimant referred the dispute to the 2nd respondent but the Ministry has failed to discharge its mandate by failing to appoint a conciliator and has further failed to issue written reasons for its failure to do so.
7. That the claimant union has a right to be recognised by the 1st respondent in terms of Article 41 of the [Constitution](#) of Kenya, 2010.
8. That the respondents have failed to enter appearance nor file a defence to the suit despite service of summons and Statement of Claim. That the Court enters judgment in favour of the claimant union accordingly.
9. The Court is satisfied that summons to enter appearance and the statement of claim were served on the respondents and affidavit of service was filed on February 6, 2023 demonstrating such service.
10. The facts set out in the Statement of Claim and witness statement by Dr. Davji Bhimji have not been controverted by the respondents.
11. The Court finds that the claimant has proved on a balance of probabilities that it had recruited about 85 unionisable employees of the 1st respondent who comprise about 60% of the unionisable employees of the 1st respondent.
12. The Court finds that the claimant has satisfied the requirements for recognition under Section 54(1) of the [Labour Relations Act](#), 2007 and enters judgment in favour of the claimant against the 1st respondent.



13. In the final analysis, the Court makes the following orders:-

- a. A declaration that the claimant union represents a simple majority of unionisable employees of the 1st respondent.
- b. The 1st respondent is directed to execute the draft Recognition Agreement presented to it within 30 days of this judgment.
- c. The 1st respondent to pay the costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 24TH DAY OF AUGUST, 2023.

MATHEWS N. NDUMA

JUDGE

