



Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Board of Management, Ugenya Teachers Training College (Cause E046 of 2023) [2023] KEELRC 2589 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2589 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E046 OF 2023
S RADIDO, J
OCTOBER 25, 2023**

BETWEEN

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

AND

**BOARD OF MANAGEMENT, UGENYA TEACHERS TRAINING
COLLEGE RESPONDENT**

RULING

1. The Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (the Union) and the Board of Management of Ugenya Teachers Training College (the Respondent) have a recognition agreement signed on 9 January 2018.
2. On 13 June 2023, the Respondent declared the positions of certain members of the Union redundant and the redundancy notice set out the terminal benefits due to each of the 10 employees.
3. Unsatisfied with the turn of events, the Union sued the Respondent on 28 June 2023, and it stated the Issues in Dispute as:
 - i. Unlawful termination on account of redundancy.
 - ii. Failure by the Respondent to remit union dues and other statutory deductions.
 - iii. Failure by the Respondent to pay the Grievants salaries for 9 months.
4. At the same time, the Union filed a Motion seeking orders:
 - i. ...



- ii. That there be a stay of execution restraining the Respondent from implementing their letters dated 13 June 2023 to the Claimant’s members pending the hearing and determination of the suit.
 - iii. That the Respondent be ordered to pay members of the Claimant unpaid salary arrears for 10 months within 30 days of this application pending the hearing and determination of the suit.
 - iv. That the Respondent be ordered to remit union dues and other unremitted statutory deductions within 30 days of this application pending the hearing and determination of the suit.
 - v. That there be an order directing the parties to appear before the County Labour Officer, Kisumu for conciliation pending the hearing and determination of this suit.
 - vi. That the costs of this application be provided for by the Respondent.
5. When served, the Respondent filed Grounds of Opposition on 11 August 2023, contesting the locus standi of the Union on account of a lack of a recognition agreement.
 6. The Secretary of the Respondent also filed a replying affidavit deponing that a dispute over the Collective Bargaining Agreement was pending before the County Labour Officer.
 7. The Respondent filed a Response to the Claim and witness statement on 14 September 2023, and documents on 18 September 2023.
 8. The Court gave directions on the Motion on 21 September 2023 and the Union filed its submissions on 6 October 2023 and the Respondent on...
 9. The Court has considered the Motion, affidavits, Grounds of Opposition, submissions and the record and makes the following determinations.
 10. One, the Union and the Respondent have a recognition agreement and, consequently the question of locus standi does not arise.
 11. Two, the dispute over the Collective Bargaining Agreement is pending before the Conciliator. A Certificate of Unresolved dispute has not been filed in Court nor an affidavit attesting to non-resolution filed. This head of the claim is, therefore, prematurely before the Court.
 12. Three, the Union did not exhaust the dispute resolution mechanisms prescribed under the recognition agreement and Part VIII of the *Labour Relations Act* in respect to the dispute over salary arrears and unfair termination of employment.
 13. Four, it behooved the Union to exhaust the alternative dispute resolution avenues in place before invoking the Court’s jurisdiction.
 14. In light of the above, the Court finds the Union moved it prematurely and the Court, therefore, declines jurisdiction.

Conclusion And Orders

15. The Court declines first instance jurisdiction over the dispute and strikes out both the Motion and Memorandum of Claim with liberty granted to move the Court, if need be, after exhaustion of alternative dispute resolution mechanisms available to the parties. No order on costs.



DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 25TH DAY OF OCTOBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

