



**Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers
(KUDHEIHA) v Board of Management Museno Secondary School (Cause
E030 of 2022) [2023] KEELRC 2768 (KLR) (2 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2768 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E030 OF 2022
CN BAARI, J
NOVEMBER 2, 2023**

BETWEEN

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

AND

**BOARD OF MANAGEMENT MUSENO SECONDARY
SCHOOL RESPONDENT**

JUDGMENT

Introduction

1. In a Memorandum of Claim dated June 30, 2022, the Claimant prays for orders;
 - a. That the Respondent be ordered to fully agree to sit down with the Claimant and commence negotiations of a Collective Bargaining Agreement.
 - b. That the Respondent be ordered to finalize and conclude the CBA within three months of the judgment.
 - c. That the concluded CBA duly signed be deposited before the Court for registration in line with provisions of the *Labour Relations Act*, 2007.
 - d. That the Respondent be ordered to work together with the Respondent in building good industrial relations, now and in the future for purposes of co-existence.
 - e. That costs be borne by the Respondent.
2. The Respondent entered appearance and filed a Statement of Response dated August 24, 2022 and filed on September 12, 2022.



3. Parties sought to canvass the suit through written submissions. The Claimant filed submissions. The Respondent did not.

The Claimant's Case

4. The Claimant states that it is a registered union which represents the interest of non-teaching staff in educational institutions among other sectors and that there is no union claiming working rights of the same bargaining interest.
5. It is the Claimant's case that vide a letter dated July 25, 2017, it forwarded a copy of the recognition agreement to the Respondent, and proposed a meet-up on September 6, 2017, with the view of signing the recognition agreement.
6. The Claimant states that it conducted elections and vide a letter dated October 4, 2017, it notified the Respondent the names of the unionized employees selected as the committee.
7. It is its case that parties met on October 3, 2017, for the CBA negotiations and that in a letter dated January 22, 2018, the Claimant forwarded the CBA proposals to the Respondent's management for its perusal and deliberations.
8. The Claimant states that it wrote several letters to the Respondent seeking a meeting to commence negotiations, but that the letter was not responded to.
9. It is its further case that it eventually, through a letter dated March 28, 2020, reported a trade dispute to its Secretary General who then escalated the dispute to the Ministry of Labour and Social Protection through a letter dated April 13, 2021.
10. The Claimant further states that both parties met and agreed to settle the matter and report back to the conciliator on progress made by September 21, 2021 as per an agreement signed by both parties, but the parties were unable to agree.
11. It is its case that the Conciliator eventually issued a certificate of unresolved dispute via a letter dated December 16, 2021, and his recommendation given in a letter dated December 20, 2021.

The Respondent's Case

12. The Respondent's case is that at the moment, only two of her employees are members of the Claimant's union. It is its further case that the Claimant has for this reason failed to meet the threshold for recognition set out under Section 54 (1) of the *Labour Relations Act, 2007*.
13. The Respondent states that the current status of her employees in respect of the Claimant's union membership is as follows: -
 - a. Rosalia Amwayi Lisili-Retired
 - b. Moses Eshikhujira -Withdrew membership
 - c. Fabiano Milimu-Retired
 - d. Paulo Ingabo Analo- Withdrew membership
 - e. Antony Kaserwa- Deceased
14. It is the Respondent's case that this position on the union membership referred to in paragraph 13, is demonstrated in the list of documents dated August 24, 2022, produced in support of this assertion.



It is the Respondent's further case that only Margaret Aseyo and Mugowye Bernard are the remaining members of the Claimant's union.

15. The Respondent states that the Claimant has lost the right to represent the Respondent's workers, hence it cannot be compelled to negotiate a Collective Bargaining Agreement (CBA).

The Claimant's submissions

16. The Claimant submits that the Respondent's employees are exercising their Constitutional rights under Articles 36 and 41 of the *Constitution*, Section 4 of *Labour Relations Act*, 2007, *ILO Convention 87* and *98*, *Declaration of Philadelphia and the Industrial Relations Charter (1984)* in enlisting union membership with the Claimant.
17. It is the Claimant's submission that the parties herein, entered into a recognition agreement which was to pave way for the CBA negotiations.
18. It is the Claimant's further submission that Section 59(2) of the *Labour Relations Act*, 2007, provides that once a CBA has been negotiated, then it must be filed in Court and after being filed, it binds both parties legally and that it is what the Respondent has been keen to avoid at all costs.
19. The Claimant states that the wages being paid by the Respondent to its unionized employees are not commensurate with the circulars from the Ministry of Public Service/Ministry of Education and other SRC circulars.
20. It is its submission that it relies on Articles 36(1), 41(2)(c) and 41(5), of the *Constitution*, which provides for freedom of association, the right to join trade unions and the right of trade unions to engage in collective bargaining.
21. The Claimant further submits that it recruited 7 employees of the Respondent, and therefore met the threshold warranting recognition under Section 54 of the *Labour Relations Act*, 2007, this being 80% of the Respondent's unionisable staff.
22. It is the Claimant's submission that it has recruited the following members, which is almost 90% of the total work force of the Respondent: -
 - a. Margaret Aseyo
 - b. Benard Musonye
 - c. Kevin Ameso
 - d. Eddah Mwitsukhan
 - e. Andrew Juma Wandabwa
23. The Claimant finally prays that the Court finds the prayers outlined in its Memorandum of Claim dated June 30, 2022, merited and grant the orders sought.

Analysis and Determination

24. I have considered the pleadings and the Claimant's submission. The issues for determination are: -
 - i. Whether the Claimant (Union) qualifies for Recognition and Collective Bargaining.
 - ii. Whether the orders sought should be granted.



Whether the Claimant (Union) qualifies for Recognition and Collective Bargaining

25. Section 54 of the [Labour Relations Act](#), 2007, states thus on recognition: -

- “(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
- (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.
- (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.”

26. The Claimant’s case is that it has recruited 90% membership from the service of the Respondent. In [Kenya Hotels and Allied Workers Union v Merryland Hotel Ltd](#) [2017] eKLR, the Court held thus: -

“Section 54 of the [Labour Relations Act](#) provides that an employer shall recognize a trade union for purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the employer. The words used are mandatory in nature. Having found that the Claimant had recruited a simple majority of employees of the Respondent at 53.33%, this court is obligated to order the Respondent to recognize the Claimant for purposes of collective bargaining.....”

27. Further in the case of [Kenya Building, Construction, Timber and Furniture Industries Employees Union v Kings Developers Limited](#) [2020] eKLR the Court while citing the case of [Kenya Chemical & Allied Workers Union v Strategic Industries Limited](#) [2016] eKLR stated as follows: -

“Recognition is a matter of verifiable numbers and in the absence of tangible evidence of recruitment of a simple majority the Court has no basis to order recognition.”

28. The Claimant produced check-off forms for Kevin Ameso, Eddah Mwitsukhan, Andrew Juma Wandabwa, Margaret Aseyo and Benard Musonye and indicated this to form a majority of unionisable employees of the Respondent. The Respondent on its part, indicated that some of the employees have since retired, died or withdrew their membership from the Claimant union.

29. The Claimant did not rebut this position as to satisfy this Court that it still retains a simple majority of membership from the Respondent’s employment. Further, the Claimant alleges that her members withdrawal from the union was as a result of intimidation and coercion, and which in itself, confirms



to this Court that with only two employees left from the Respondent's employ, the Claimant cannot claim to have met the threshold for recognition.

30. In *Kenya Shoe and Leather Workers Union v Crown Industries Limited & another* [2017] eKLR the Court relying in the decision in *Aviation & Allied Workers Union v Air Kenya Express Limited & another* [2013] eKLR stated that:

“Attainment of a simple majority for purposes of recognition is a matter of evidence and a trade union may lose an accrued recognition if its numbers drop below the simple majority threshold (see *Scientific Research International Technical & Allied Workers Union v Kenya Agricultural Research Institute & another* [2013] eKLR)

31. I concluded by holding that the Claimant union has not met the threshold for recognition and the subsequent right to collective bargaining. The Claim is dismissed with no orders on costs.

32. Judgment of the Court.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 2ND DAY OF NOVEMBER, 2023.

CHRISTINE N. BAARI

JUDGE

