



**Kenya Union of Domestic, Hotels, Educational Institutions and
Hospitals v BOM Mama Ngina Girls High School (Cause E061 of 2023)
[2023] KEELRC 3467 (KLR) (6 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3467 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E061 OF 2023
M MBARŪ, J
DECEMBER 6, 2023**

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITALS CLAIMANT**

AND

BOM MAMA NGINA GIRLS HIGH SCHOOL RESPONDENT

JUDGMENT

1. The claimant is a registered trade union and the respondent is the board of management of Mama Ngina Girls Secondary School established under Section 55 of the Basic Education Regulations, 2013.
2. The claimant and the respondent have a Recognition Agreement which took effect on 24 April 2017 and the respondent forwarded the same to the office of the Attorney General through letter dated 8 May 2017.
3. On 23 March 2019 the claimant wrote to the respondent forwarding the CBA proposal for the purpose of commencing and concluding the negotiations. Follow up communications issued on 24 September 2021, 7 January 2022, 5 April 2022 and 13 May 2023 without response. Further invitations for negotiations went without the respondent attendance.
4. The claim is that the claimant is the right sector trade union to represent employees of the respondent in terms of Section 54(8) of the *Labour Relations Act*, 2007 (the LRA). By recruiting a simple majority of the total unionisable employees as per the checkoff forms, the claimant is entitled to sign a CBA with the respondent. The failure by the respondent to conclude and sign the CBA proposal placed with them offends the rights and fundamental freedoms guaranteed under Article 36 and 41 of *the Constitution* and Section 4, 54 and 57 of the LRA.



5. The respondent employees in joining the claimant union and securing recognition agreement is acknowledgment of the right to organise and bargain collectively.
6. The claimant is seeking that the respondent be directed to conclude and sign a CBA and that the claimant be awarded costs herein.
7. In response, the respondent's case is that the Recognition Agreement with the claimant dated 24 April 2017 is not legally binding as the parties who signed it were not the rightful and legal officials of the respondent competent to enter into an agreement of such magnitude for the respondent. The individuals who signed the Recognition Agreement for the respondent had not been authorised to do so thus making the CBA dated 24 April 2017 null and void.
8. The claims that the respondent declined to commence and conclude negotiations of the CBA are false. The respondent has been in active communication with the claimant while seeking advice from the Ministry of Education on how to proceed with the signing the CBA as the respondent needed guidance from its lawyers.
9. The claimant cannot force any worker to join a trade union without consent. The claimant has not shown any of its members drawn from the respondent employees. Due to Covid pandemic effects and harsh economic challenges, the respondent decided to pay support staff leave and commuter allowances. It reviewed employee salaries per the basic minimum required by law. There is no violation of any rights as alleged and the court should take the respondent's circumstances to allow for fresh negotiations from the Recognition Agreement before addressing the CBA.
10. Both parties attended court for hearing and the claimant opted to reply on the pleadings filed.
11. Mr Oyondi for the claimant was cross-examined and testified that the Recognition Agreement signed on 24 April 2017 was signed by Loise Nyambura Kimani, the Deputy Principal for the respondent. She signed the agreement on behalf of the respondent. It was the duty of the respondent to appoint a person to sign the CBA. How the respondent was to handle such a matter was not discussed with the claimant. The respondent has not made any efforts to negotiate the CBA.
12. Mr Oyondi also testified that for the CBA negotiations, the number of employees who have joined the claimant union is not necessary. Upon recognition of the claimant by the respondent, the right to negotiate the CBA is under Section 54 of the LRA.
13. In evidence, the respondent called Omar Mwanahamisi, the principal who testified that the claimant is seeking to compel the respondent to commence CBA negotiations but the respondent has made efforts to negotiate the same without success due to colliding of events on the dates the meetings were scheduled the Recognition Agreement between the parties dated 24 April 2017 is not binding, the person who signed for the respondent was not competent to enter into an agreement of such magnitude. It is therefore null and void. The Deputy Principal at the time had no written authority to sign the agreement.
14. Ms Mwahamisi also testified that, there are communications by Fatma Athmani, the Deputy Principal to the Attorney General on behalf of the respondent but the secretary to the Board is the principal of the school. The Board is the employer while the teachers are under the employment of the Teachers Service Commission. The Board is responsible for employees of the respondent and who commenced CBA negotiations and have asked for re-negotiations due to the recognition agreement having erroneous signatures.



15. The respondent filed written submissions which are analysed and the issues which emerge for determination are whether the Recognition Agreement between the parties is valid and whether the court should direct the respondent to execute the CBA between the parties.

Section 54(1) of the LRA provides that;

An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

16. The recognition under section 54(1) of the LRA is by a written agreement between the parties.
17. On the one hand, the claimant asserts that the recognition process is complete hence the draft CBA proposal that is subject of these proceedings. On the other hand, the respondent's case is that the agreement is null and void as it was executed by the Deputy Principal without written authority.
18. Indeed, as correctly submitted by the claimant, it has no control of the internal operations of the respondent. As of 24 April 2017 when the Recognition Agreement was signed for and on behalf of the respondent by Loise Nyambura Kimani, Deputy Principal, Mama Ngina Girls Secondary School, there was also AbdulQadiq Khamis Mwinyi, Board of Management Member for the respondent who signed the agreement on behalf of management of the respondent. This second signatory for the respondent is not challenged at all.
19. Recognition of a trade union by an employer is a process. The threshold of Section 54 of the LRA must be achieved before the employer can be satisfied that indeed the trade union operating in the subject sector has attained a simple majority of unionisable employees to attain recognition.
20. I take it, as of 24 April 2017 when Loise Nyambura Kimani, Deputy Principal and AbdulQadiq Khamis Mwinyi, Board of Management Member executed the Recognition Agreement for the respondent with the claimant, the motions and procedures required for recognition had been gone into and achieved.
21. Where the respondent is not satisfied with this recognition, from 24 April 2017 to date, nothing has been done to address such matter.
22. Upon execution of a Recognition Agreement, if dissatisfied for any given reason(s) or for good cause, under the provisions of Section 54(5) of the LRA, an employer is allowed to apply to the National Labour Board and seek the same be revoked.

(5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.

23. No dispute has been registered with the Minister or the court with regard to the Recognition Agreement since 24 April 2017.
24. The Recognition Agreement executed for and on behalf of the respondent by its officers on 24 April 2017 is valid and allows the claimant to proceed and seek to negotiate CBA for its members in the employment of the respondent.
25. The respondent, under the mistaken belief that the Recognition Agreement was null and void has gone back and forth without engaging in negotiations with the claimant on the CBA proposal. Several meetings have been called by the claimant and the defence is that the respondent has had conflicting events on the proposed dates.



- 26. It is imperative that upon the recognition of the claimant by the respondent, the claimant has the right to negotiate terms and conditions of employment for its members. The response that the respondent has since reviewed pay for support staff in terms of leave and commuter allowances and also reviewed employee salaries per the basic minimum required by law, such are important and relevant matters which can well be secured under the CBA negotiations. Taking into account the Covid pandemic and its effect overall to everyone nationally, the respondent is not the only institution faced with its impact. CBA negotiations are on terms and conditions of employment, both financial and non-financial. Reliance on Covid pandemic to avoid CBA negotiations does not aid or foster industrial peace.
- 27. At the disposal of the parties is the Minister and its officers particularly the Labour Officer responsible for the area covered by the respondent. Such resources come in handy to guide parties in matters of CBA negotiations.
- 28. The claimant, well recognised by the respondent has the right to seek CBA negotiations and lodge it case with the court in the event the employer refused to oblige. In the case of Union of National Research & Allied Institute Kenya v Kenya Medical Research Institute [2013] eKLR, in the case of Kenya Engineering Workers Union v Kenya Marine Contractors (EPZ) LTD Cause No. 152 of 2012 upon establishing there was recognition of the trade union by the employer, the court directed the employers to proceed and negotiate a CBA within given timelines.
- 29. Accordingly, in this case, parties are granted 30 days to complete CBA negotiations and present the same for registration.

**To foster negotiations in good faith, each party to bear own costs.
Mention on 22 January 2024 to confirm compliance.**

Delivered in open court at Mombasa this 6th day of December 2023.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

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