



**Kudheiha Workers Union v Board of Management Mwariki Secondary School
(Cause 22 of 2021) [2022] KEELRC 1786 (KLR) (27 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1786 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 22 OF 2021
HS WASILWA, J
JUNE 27, 2022**

BETWEEN

KUDHEIHA WORKERS UNION CLAIMANT

AND

**BOARD OF MANAGEMENT MWARIKI SECONDARY
SCHOOL RESPONDENT**

JUDGMENT

1. The claimant filed this claim dated March 29, 2021 on the May 26, 2021 alleging that the respondent had refused to accord it recognition and failed to deduct union dues contrary to article 41(5) of the [Constitution of Kenya](#) , section 48(2) and 48 (3) and section 54(1) of the [Labour Relation Act](#) and intimidating workers to sign new contract when there are active and valid contracts still in place.
2. The claimant prays for the following reliefs;
 - a. That the respondent be compelled to deduct and remit union dues as indicated on the signed form S.
 - b. The respondent be instructed to recognize the union.
 - c. The claimant reiterates that the management should pay the monies owed to the union with his own monies.
 - d. The respondent should be estopped from victimizing members of the union
 - e. The costs of this suit and interests
3. The claimant avers that the staff members of the respondent have exercised their right of association by joining the claimant union *vide* the annexed Form s duly signed by the 11 members of the unionisable employees of the respondent acknowledging their membership. The claimant served the respondent



with duly signed check off forms and served the standard recognition agreement and later confirming interim officials of the works committee.

4. To defeat the said acts by the claimant's members, the respondent has now embarked on victimizing the said employees forcing them to sign new contract when the previous ones have not expired. The issue was raised with the respondent who have failed to take any action and now its members have threatened to withdraw from the union to the detriment of the claimant.
5. It is contended that the failure by the respondent to recognize the claimant is contrary to the provisions of section 54(1) of the *Labour Relations Act*.
6. The parties after several negotiation agreed on the issue of union dues as per the record on the November 16, 2021 leaving the issue of recognition which is pending determination by the court
7. The parties were directed to dispose of the issue pending for determination vide written submission.

Claimant's Submissions.

8. The claimant submitted that it entered into a recognition agreement with the ministry of education, which recognition had never been revoked. It is argued that the said recognition empowered the claimant to negotiate all matter of industrial relation in the Education sector in Kenya.
9. It is the claimant arguments that recognition agreement can be entered between a trade union and an employer, group of employers, organization or members of organization of employers. He further stated that the process of recognition is provided for under section 2 & 54 (1) of the *Labour Relations Act*, which provides that for any union to be recognized by an employer or organization, it must recruit a simple majority of the unionisable employees in that organization. Accordingly, it was argued that the claimant has recruited a simple majority of the respondent's employees.
10. It was also submitted that the recognition agreement forwarded to the respondent is one that has been used in other institution as such the terms therein are acceptable and favorable to both parties and the respondent should therefore be compelled to sign the recognition agreement.

Respondent's submissions.

11. The respondent submitted that the only issue that is bending for determination is the issue of recognition and the question raised is whether there is quorum in the membership of the union. It was submitted that the initial employee submitted to it by the check list was Eleven (11) however the numbers have dwindled to a mere Three (3), one having retired and other 6 left employment on lapse of contract, which does not represent the simple majority of the respondent's unionisable employee as envisaged under section 54(1) of the *Labour Relations Act*. To support this argument, the respondent relied on the case of *Kenya Union of Commercial Food and Allied Workers v Shade Net Limited* [2017] eKLR where the court held that;

“While alleging that 51% of the employees have been recruited, the claimant has not stated the numbers recruited as against the total number of eligible employees. The respondent has stated that it employees over 200 workers and those recruited are only 44. On a balance of probability and taking the material on record into account, the court returns that the claimant has failed to establish that it has recruited a simple majority of the eligible unionisable respondent's employees as per section 54(1) of the Act.”

12. It was argued that the assertion by the claimant that its members were victimized were not backed up with evidence. It was further submitted that the claimant has not stated the number of employees



- in the respondent's employ against those whom they have recruited to ascertain whether they had obtained the simple majority to warrant them being recognized.
13. It was thus argued that the claimant has not recruited the simple majority and its claim with regard to recognition be dismissed with costs.
 14. I have examined the evidence and submissions of the parties herein. The simple issue here is recognition where section 54 (1) of the [Labour Relations Act\(LRA\) 2007](#) states as follows;
 - (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".
 15. For this court to find for the claimant, the claimant must demonstrate they have a simple majority of all unionsable employees of the respondent.
 16. The respondents have averred that the claimant does not have a simple majority of the unionsable employees 3 being the ones remaining as one retired and the other 6 left after their contracts expired.
 17. The onus of proving the numbers required for recognition rests with the claimant. The claimant must demonstrate they have the numbers by exhibiting the register of employees vis a vis the number of unionisable employees. The claimants have not exhibited this vital evidence.
 18. The claimants have also not demonstrated difficulty in obtaining the employees register which is in the hands of the respondent.
 19. In the absence of proof that they have a simple majority of employees having joined the union, the prayers sought by the claimant cannot be granted.
 20. I therefore find that the claim by the claimant is not established and dismiss it accordingly.
 21. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 27TH DAY OF JUNE, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimants – absent

Mrs. Wanjeri for the Respondents – present

Court Assistant - Fred

