



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRCC/40/2020

CITATION: KENYA NATIONAL UNION OF NURSES

VS

FRIENDS LUGULU MISSION HOSPITAL

JUDGMENT

The dispute herein concerns alleged refusal by the respondent to deduct and remit trade union dues and refusal to sign a recognition agreement.

2. According to the Claimant on 11th February, 2019 it wrote to the respondent informing it of the nurses who had joined the Claimant union and requesting the deduction and remission of union dues to a specified account. The Claimant further on the same date wrote asking for a meeting to update members on recruitment into the union and election of institutional leaders but the meeting was not allowed by the respondent.

3. On 21st March, 2019 Claimant further wrote forwarding the draft recognition agreement to the respondent for signature but the respondent refused and or ignored to sign the recognition agreement.

4. The Claimant further averred that it issued a strike notice to the respondent over the issue and the matter was referred for conciliation by the Cabinet Secretary but the dispute was never resolved.

5. The Claimant therefore sought an order directing the respondent to pay the Claimant the sum of Kshs. 391,000/= being unremitted dues and further sum of Kshs. 117,300 to COTY (K) as dues.

6. The Claimant further sought an order directing the respondent to sign a recognition agreement within 14 days of the judgement of the Court.

7. The respondent on its part averred that the draft recognition agreement had no basis as the membership check-off forms were not signed and further that the Claimant never satisfied the statutory requirement of simple majority through the proper procedure.

8. The respondent further contended that it remitted the monthly dues to the Claimant on behalf of duly confirmed union members in its employment.

9. Regarding the strike notice the respondent contended that the same was ill-informed and without any basis in law.

10. Section 54(1) of the Labour Relations Act provides that an employer in public sector shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees in the organization concerned.

11. The respondent herein does not seem to seriously deny that the Claimant recruited some of its unionisable employees. The respondent has confirmed that it received the check-off forms from the Claimant and had in fact effected deductions with regard to those employees who confirmed they were members of the Claimant Union.

12. The respondent's contention and the only reason why it had not signed the recognition agreement was because the process of recruitment

was according to the respondent not procedural that is to say no balloting was done to verify those allegedly recruited were actually recruited and further that the check off forms submitted by the Claimant did not bear the signature of the Claimant's Secretary General.

13. It's the court's view that the objections to signing of the recognition agreement and deduction of union dues are were red herrings and tactful delays in commencing lawful union deductions and signing of the recognition agreement. The Court is unable to reconcile the argument by the respondent that the Claimant had not recruited enough members yet when the Claimant issued strike notice the respondent responded to the same. If the Claimant had no sufficient members, would the strike notice be of any consequence?

14. Recognition for purposes of collective bargaining is a mandatory requirement under Section 54(1) of the Labour Relations Act. As observed earlier in the judgement, the only precondition is the recruitment of simple majority of unionisable employees in the organization. Once this condition is met recognition is mandatory.

15. Concerning Union dues, as was held by Mbari J in the cases of BIFU -V- BORA SACCO SOCIETY (2016) eKLR where union dues are required to be deducted and remitted to a Trade Union and such dues are not deducted but are remitted to the Union, the employer shall pay such dues from its own account. Such uncollected dues cannot be received from the employee as the employer is at fault.

16. In conclusion the Court finds the claim merited and hereby orders as follows: -

(a) The respondent pays Kshs. 391,000 to Claimant through a designated account meant for collection of Union dues.

(b) The sum of Kshs. 117,300/= to COTU (K) through the account designated for collection of Union dues.

(c) The respondent to sign the recognition agreement with the Claimant within 30 days of this judgement.

17. It is so ordered.

Dated at Eldoret this 15th day of March, 2021

Delivered at Eldoret this 15th day of March, 2021

SIGNED BY: HON. JUSTICE J. N. ABUODHA

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-03-15 12:03:53+03