



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO.E6472 OF 2020

KUDHEIHA WORKERS' UNION..... CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT NAIROBI SCHOOL.....RESPONDENT

JUDGMENT

1. The claimant union filed suit on 20/11/2020 praying for an order in the following terms *inter alia*: -

(a) The respondent be compelled to deduct and remit union dues in terms of section 48 (2) (b) (1) and 48 (3) of the Labour Institutions Act.

(b) That the respondent be compelled to sign the Recognition Agreement between itself and the claimant union.

(c) That the Respondent be stopped from intimidating the claimant's union members.

2. The claim is based on facts set out in the Statement of Claim and in the supporting affidavit of Albert Njeru, the Secretary General of the claimant union.

3. The facts of the case are that the union recruited 55 out of 84 support staff at the respondent school. That in terms of Section 54 (1) of the Labour Relations Act, 2007, this represents a simple majority which is the statutory threshold set in the Act, for an employer to recognize a union for purposes of recognizing it as the sole union to negotiate the terms and conditions of service for all unionisable employees of the employer.

4. That the union duly served the respondent with a check-off system duly authorized by the Cabinet Secretary Labour. The check-off list is attached to the statement of claim showing the names of all employees who joined the union and appended their signatures thereto.

5. That the respondent has failed and/or neglected to commence deductions of union dues as required by law and has failed to sign the Staff Recognition Agreement sent to it by the union.

6. That the respondent has instead engaged in unfair labour practice contrary to Article 41 of the Constitution by threatening its employees who joined the union to withdraw from the membership.

7. That the Court grants the orders sought by the claimant union accordingly.

8. The suit is supported by an affidavit of one Patrick Karanja the Branch Secretary Nairobi of the claimant union who deposed that the union recruited 55 members from Nairobi School and reiterates the facts set out in the statement of claim and in the supporting affidavit of the Secretary General aforesaid.

9. The claimant union filed an affidavit of service by one Daniel Kitonga a duly authorized process server who deposes that on 25/11/2020 he received copies of the Notice of Motion Application under Certificate of Urgency, Memorandum of Claim and notice of summons dated 18/11/2020. That to the documents was attached an order by Nduma, J. dated 24/11/2020 issued *ex parte* directing that the Application be dispensed with and the parties proceed with the main suit, this being a recognition dispute. The Court had in the said order directed the respondent to respond to the main suit within 21 days of service and the matter be mentioned for directions on 25/1/2021.

10. The process server deposes, that on the said 25/11/2020, he went to the respondent school along Waiyaki way and served the documents on one Paul Njoroge, the receptionist who in turn took the documents to an inner office of the Director and the receptionist confirmed to the process server that the Director had accepted service of the documents, but had declined to sign on the principal copy in acknowledgment of

receipt. That the service was at 10.42 a.m.

11. Despite the service, the respondent failed to enter appearance nor file a statement of defence to the suit.

12. On 25/1/2021, the claimant represented by Mr. Gitonga appeared before Court for mention. The respondent did not appear and the Court being satisfied that service had been effected on the respondent directed the suit to proceed to formal proof and the claimant to file affidavit evidence and written submissions within 21 days.

13. The claimant filed affidavit of Patrick Karanja aforesaid sworn to on 23/2/2021 and written submissions in support of the particulars of claim.

14. The Court is satisfied upon consideration of the pleadings; supporting affidavits and written submissions that the claimant union had recruited 55 employees of the respondent school out of 84 employees and had thus satisfied the requirements under Section 54(1) of the Labour Relations Act, to be recognized as the sole union to negotiate terms and conditions of service of all unionisable, support staff of the respondent school.

15. The claimant has proved its case on a balance of probabilities that it had effected service on the respondent in respect of the check-off forms duly executed by the recruited members.

16. The Court is satisfied that the respondent was in default of its obligation to commence deducting union dues in respect of the 55 employees and to sign the Draft Recognition Agreement they were served with by the claimant union.

17. The Court has considered the Industrial Court of Kenya case of Kenya Plantation and Agricultural Workers Union and Expressions Flora Limited [2013] eKLR in which Byram Ongaya, J. ordered the respondent who was in default to commence deduction of union dues and remit to the claimant union as per the forms completed by the employees who were members of the claimant union and employees of the respondent.

18. In the final analysis, the Court makes the following final orders in favour of the claimant union against the respondent school.

(a) The respondent is directed to immediately commence deduction of union dues in respect of the 55 employees who are members of the claimant union and remit the same to the designated union account on a monthly basis in terms of Section 48 of the Labour Relations Act, 2007.

(b) The respondent is directed to immediately sign the Recognition Agreement between it and the claimant union and commence collective bargaining in terms of the Agreement with the Claimant union.

(c) The respondent is directed to desist from any form of harassment and or intimidation of its employees who are members of the claimant union aimed at forcing the employees to withdraw from the union.

(d) Costs to follow the event.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MAY, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Gitonga for claimant union

Ekale – Court Assistant