



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 117 OF 2020**

**BETWEEN**

**KENYA PRIVATE UNIVERSITIES WORKERS UNION.....CLAIMANT**

**VERSUS**

**MT. KENYA UNIVERSITY .....RESPONDENT**

**RULING**

1. The Claimant Union has filed an Application dated 26<sup>th</sup> February 2020, seeking orders among others, that the Respondent is compelled to grant the Claimant Union access to Unionisable Employees of the Respondent, for purposes of recruitment as Members of the Claimant Union.
2. The Respondent has filed a Notice of Preliminary Objection, stating that it does not have a Recognition Agreement with the Claimant Union, and has no obligation therefore, to engage with the Claimant Union.
3. The Parties agreed to have the Application and the Objection merged, and considered by way of Written Submissions.

**The Court Finds: -**

4. The Preliminary Objection is misconceived. The Claimant does not have to be formally recognized by the Respondent University, to access Unionisable Members in its recruitment drive. Recognition can only be achieved, if there is recruitment. What the Claimant has done, is to correspond with the Respondent, seeking access, within the understanding of the Claimant Union, of the term access. Such engagement does not have to preceded by a Recognition Agreement.
5. Equally misconceived is the thinking by the Claimant Union, that the Respondent has an unqualified obligation to facilitate the Claimant, in its recruitment drive. The Claimant has persistently demanded that the Respondent allows the Claimant to hold a meeting with the Respondent's Employees, at the Respondent's Hall. Access to potential Members has not been shown to have been denied, by the Respondent merely declining to grant the Claimant its hall, to meet and educate potential Members.
6. The Claimant Union went overboard, in making demands such as being availed the Respondent's hall; requiring that the Vice-Chancellor convenes Senate to agree on a date the Claimant would meet Respondent's Employees; requiring that the Human Resource Manager writes to all Employees, inviting them to the scheduled meeting at the hall; and requiring that thereafter, the Respondent sets up a tent at the University for purposes of facilitating continuous recruitment. One would be forgiven in thinking that the Claimant Union has been co-opted as part of the Respondent's Management. Why would the Claimant demand that Respondent's Vice Chancellor convenes Senate, and the Human Resource Manager is advised in a particular way, in discharging his/her role? These demands are not only unreasonably; they border on the bizarre.
7. The Employer has no obligation at all, in assisting the Union, to recruit Members in the manner demanded by the Claimant. The Respondent is only required to open its gates to the Claimant. There is no evidence that Claimant's representatives made a visit to the University and were denied access. How the Claimant undertakes recruitment once the gates have been opened, and the Claimant allowed in, is not the business of the Respondent. The Respondent would only take keen interest, in the activities of the Claimant, if recruitment is being carried out, in a manner that interferes with its daily operations such as of course, learning. It is clear that the Claimant has misunderstood the concept of access to an Employer's premises, for purposes of recruitment.

8. Furthermore, recruitment can also suitably be carried outside the workplace. The Claimant can set up the recruitment infrastructure such as tents and leasing of town halls in public places, for recruitment of members. It is not mandatory that recruitment only takes place at the

workplace. Tents can be set up by the Claimant within public spaces surrounding the Respondent's Institutions, to recruit members.

9. It is unhelpful to make the demands the Claimant has made on the Respondent all in the name of access. This approach is poisoning the atmosphere of industrial relations, even before the structure for long-term exercise of such relations through a Recognition Agreement, has been set up.

**IT IS ORDERED:** -

**a. The Preliminary Objection by the Respondent is declined.**

**b. The Application by the Claimant is declined.**

**c. No order on the costs.**

**DATED, SIGNED AND RELEASED TO THE PARTIES AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 18<sup>TH</sup> DAY OF JUNE 2021**

**JAMES RIKA**

**JUDGE**