



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 447 OF 2019

(Before Hon. Justice Hellen S. Wasilwa on 13th January, 2020)

KENYA PRIVATE UNIVERSITIES

WORKERS UNION.....CLAIMANT/APPLICANT

VERSUS

GRESTA UNIVERSITY.....RESPONDENT

RULING

1. The Applicant filed a Notice of Preliminary Objection, to the Claimant/Respondent's Notice of Motion on 14th August, 2019. The Preliminary Objection raises the following grounds:

1. ***THAT this Court lacks jurisdiction to entertain, hear and/or determine the Notice of Motion as the Claimant is not properly before Court for failure to comply with the mandatory provisions of section 54 (3) of the Labour Relations Act No. 14 of 2007.***

2. ***THAT the present motion is a belated attempt by the Claimant to coerce the Respondent into a trade union relationship despite the failure of the Claimant to meet the threshold for unionisable employees pursuant to section 54 (1) of the Labour Relations Act.***

3. ***THAT the orders sought cannot be granted as the same are tantamount to violating the Respondent and its students' rights as enshrined under Article 36 & 53 of the Constitution of Kenya 2010.***

4. ***THAT the present motion is a disguised appeal against the decision of the conciliator dated 16th May 2019 which is untenable in law.***

2. The Claimant/Respondent filed its Reply to the Notice of Preliminary Objection on 13th September, 2019. It avers that the Applicant's contention that the Court lacks jurisdiction to determine the application is misconceived for reason that the suit herein is not tripartite as provided under Section 54 of the Labour Relations Act, 2007.

3. It further avers that the present suit is an employer/employee issue thus it is properly before this Court as it is brought under Sections 4,48,56 and 74 of the Labour Relations Act.

4. The Preliminary Objection was heard by way of written submissions but only the Respondent filed its submissions.

Claimant/Respondent's submissions

5. The Respondent submits that the Applicant's ground of objection that it has no locus to institute the suit was dealt with in **Kenya Private University Workers Union v Kenya Methodist University [2017] eKLR**.

6. It submits that recognition and a collective bargaining agreement are not determinants of *locus standi*. It further submits that Article 41 (2) (c) of the Constitution and Section 4 of the Labour Relations Act provide for the right of an employee to join a trade union and participate in trade union activities.

7. It avers that its application and main suit seek the Court's interpretation as well as the enforcement of the law due to the Respondent violating the provisions of Section 56 of the Labour Relations Act on access to its premises and Section 48 of the Act on signing of check off forms.

8. It submits that the matter before Court is not on recognition as Section 48 of the Labour Relations Act does not require any recognition Agreement.

9. It further submits that the Applicant's preliminary objection does not conform to the nature of a Preliminary Objection as described in **George Owino Mulanya & 4 others v Charles Achieng Odonga & Another [2017] eKLR.**

10. It further submits that its dispute was not resolved by the Conciliator thus it approached the Court under a certificate of urgency as provided under Section 74 of the Labour Relations Act. It urges the Court to dismiss the Preliminary Objection.

11. I have considered the averments of both Parties. I find the Preliminary Objection application lacks merit as the matter before Court relate to employee-employer relation and the same is dismissed accordingly. The Parties to proceed with the main claim.

Dated and delivered in open Court this 13th day of January, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Owiti for Claimant Union – Present

No appearance for Respondent