



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 739 OF 2018**

**KENYA UNION OF DOMESTIC, HOTELS,  
EDUCATIONAL INSTITUTIONS HOSPITAL  
WORKERS (KUDHEIHA WORKERS).....CLAIMANT**

**-VERSUS-**

**AVENUE HEALTH CARE.....RESPONDENT**

**-AND-**

**KENYA NATIONAL UNION OF NURSES.....INTERESTED PARTY**

(Before Hon. Justice Byram Ongaya on Friday 13<sup>th</sup> March, 2020)

**JUDGMENT**

The claimant filed the statement of claim on 18.05.2018 through J.A. Guserwa & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) The respondent to accord formal recognition to the claimant within 14 days from the date of the award.
- b) The respondent to deduct the union dues of all unionisable employees who are members of the applicant and remit the same forthwith to the union's gazetted account.
- c) An injunctive order to the respondent not to victimise, suspend, dismiss terminate and lockout employees for participating in trade union activities or affiliating with the claimant.
- d) The respondent to pay costs of the suit.

The respondent filed a memorandum of response dated 20.02.2019 through Lilian & Koech Associates. LLP. The respondent prayed that the suit be dismissed with costs.

By consent order the suit is to be determined on the basis of the pleadings and the material on record. The case is for recognition and union dues. The claimant's case is that it has met the threshold in sections 48 for deduction and remission of union dues and section 54 of the Labour Relations Act, 2007 for recognition.

Under section 54 (4) of the Act, a dispute about the right of a trade union to be recognised under the section may be referred by the trade union for conciliation in accordance with Part VIII of the Act. If the dispute is not resolved during the conciliation, then the trade union may refer the dispute to this Court. The material before the Court show that the claimant has not exhausted the conciliation procedure as no reference to such conciliation has been made by the parties in the material on record. Thus the Court finds that the suit was filed prematurely as parties are directed to comply with that procedure. The court will therefore not delve into the merits of the recognition dispute.

The parties recorded a consent on deduction and remission of union dues per section 48 of the Act for the respondent's unionisable members who have already and duly joined the claimant as per Form S signed and served. The Court considers that the deduction of the union dues should continue accordingly.

The Court further considers that under Article 41 of the Constitution, the Labour Relations Act, 2007 and section 46 of the Employment Act,

2007 the injunction as prayed for is the law and therefore it will issue.

In furtherance of good industrial relations between the parties and promotion of the spirit of amicable resolution of the issue of recognition, each party shall bear own costs of the suit.

In conclusion judgment is hereby entered for the parties for:

- 1) The declaration that on the dispute about the right of the claimant to be recognised by the respondent, the claimant has not exhausted the conciliation procedure under the Labour Relations Act, 2007 and the suit was premature to that extent as the Court declines to delve in the merits of that dispute.
- 2) The declaration that subject to the outcome of the recognition dispute, the respondent is to continue deducting union dues and remitting to the claimant trade union with respect to all its employees who have signed Form S signifying membership of the union.
- 3) The injunctive order hereby issued against the respondent not to victimise, suspend, dismiss terminate and lockout employees for participating in lawful trade union activities or affiliating with the claimant.
- 4) Each party to bear own costs of the suit.

**Signed, dated and delivered in court at Nairobi this Friday, 13<sup>th</sup> March, 2020.**

**BYRAM ONGAYA**

**JUDGE**