



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 179 OF 2017

UNION OF NATIONAL RESEARCH INSTITUTES STAFF OF KENYA (UNRISK).....CLAIMANT

VERSUS

NATIONAL MUSEUMS OF KENYA.....RESPONDENT

AND

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS.....INTERESTED PARTY

JUDGEMENT

1. The claimant union alleged that ELRC in Nairobi found that it was the right union to represent respondent's unionisable employees. This was in cause No. 30(N) of 2009. The dispute in the above matter was recognition agreement and the claimant between the date of the said award through legal lobbying managed to acquire and recruit 387 members representing 80% of the respondent's unionisable employees. The respondent ought to therefore legally recognize the claimant in accordance with the Labour Relations Act.
2. According to the claimant the respondent serve as a place where research and dissemination of knowledge in all fields of science, technology and human interest may be undertaken hence it's with this that the claimant south to protect the interests of the respondent s employees. The claimant further averred that there was no union representing the interest of the respondent's employees as the respondent terminated the recognition agreement with KUCFAW that was representing the interest of the employees.
3. The respondent though entered appearance on 24th February 2017 did not seem to have filed response to the claim. However following the ruling of this court delivered on 21st September 2018 KUCFAW was joined as a necessary and interested party. They consequently filed their response to the claim on 17th January 2019. The interested party (IP) stated among others that it had a valid recognitions agreement with the respondent and has negotiated and concluded several collective bargaining agreements with the respondent governing unionsable employee's terms and conditions of service.
4. The Interested party further stated that whereas the claimant purports to have reported the existence of a trade dispute between itself and the respondent to the ministry of labour, leading to the appointment of one Mrs C. Otieno as the conciliator, the letter reporting the dispute and the appointment of the conciliator ar3e not before the court. The Interested party further contended that it was necessary to notify them of the dispute under section 64 of the Labour Relations Act that the matter had been referred to the ministry for conciliation.
5. The Interested Party further contended that it was only after the termination of the existing recognition agreement between the IP and the respondent that the claimant can seem to be recognized by the respondent.
6. Concerning the check-off sheets the IP contended that the sheets allegedly sent to the respondent on 12th November 2012, 27th March 2015 and 4th January 2016 do not show the dates the same were signed. Further check-off sent to the employer on 12th November, 2012 could not argued that the matter was res judicata be part of the dispute filed on 2nd February 2017 since the same were statute barred. The IP further argued that the matter was *res judicata* since the issues in the claim herein were determined with cause Nos 1366 of 2011, 1126 of 2012 and 905 of 2015.
7. The claimant did not seem to strongly respond to the position taken by the IP that it has a valued recognition agreement with the respondent and has over the years negotiated and concluded several cbas with the respondent.
8. The claimant's main contention seem to be that it is in the best union suited to represent the workers in the sector where the respondent is operating. The IP does not agree but whereas that may be so, the claimant must first conclude a recognition agreement with the respondent. However no such agreement can be concluded with the respondent until the existing one with the IP is validly terminated in accordance with the provisions of the Labour Relations Act. No evidence of a valid termination has been provided by the claimants.

9. Concerning the issue of res judicata, the court has noted that the issue of which is the correct union to represent the respondent's unionisable workers hence has recognition agreement which has been litigated before this court and pronouncements thereon made by different Judges. It is therefore not only *res judicata* but an attempt by th4e claimant to use the court process to get recognition with the respondent. This is not the role of the court.

10. For the above two reasons the court finds this claim without merit and the same is hereby dismissed with costs.

11. It is so ordered.

Dated at Nairobi this 14th day of May, 2020

Abuodha Jorum Nelson

Judge

Delivered this 14th day of May, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.