



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CASE NO. 90 OF 2018**

*(Before Hon. Justice Mathews N. Nduma)*

**KENYA TERTIARY AND SCHOOLS**

**WORKERS UNION –KETASWU.....CLAIMANT**

**VERSUS**

**THE TEACHEAR TRAINER COLLEGE**

**COUNCILS, KAIMOSI TTC.....RESPONDENT**

**JUDGMENT**

1. The suit is founded on *Section 54(1) of The Labour Relations Act No. 14 of 2007*. The claimant seek to be recognized by the respondent as the union that represents all unionsable employees of the respondent having recruited as its members 42 out of 74 unionsable employees of the respondent which constitute 56% of all unionsable members and therefore has attained the threshold in terms of *Section 54(1)* which is a simple majority.

2. The claimant relies on the check-off forms dated 1<sup>st</sup> December 2015 showing the names and signatures of the recruited members.

3. The claim is further supported by an affidavit of Secretary General of the claimant union deposed to on 6<sup>th</sup> April 2018 in which he confirms having visited the respondent's institution and recruited the said members, filled check-off forms dated 1<sup>st</sup> December 2015 and presented it to the respondent for deductions to be made in terms of *Section 48(2) of the Labour Relations Acts 2007*. That the Secretary General further prepared draft Recognition Agreement and presented it to the respondent on the same 1<sup>st</sup> December 2015.

4. That the respondent has failed and/or neglected to deduct union dues nor sign the Recognition Agreement. Wherefore the claimant prays for the reliefs sought.

**Replying Affidavit**

5. The respondent filed a replying affidavit of Onsere Benson Mudangale the Chief Principal of the respondent's college and Secretary of the Board of Management.

6. The deponent admits that the Secretary General of the claimant visited the college in November 2015 with a memo to recruit employees of the college as its members.

7. That the college received a letter dated 4<sup>th</sup> December 2016 forwarding a list of the respondent's employees in a form dated 4<sup>th</sup> December 2015 described as check-off form and demanded union deductions from the employees.

8. That the form did not give the respondent authority to make deductions from the employees and so it was not effected. The respondents did not get an order from the minister to effect the deductions. That the union did not seek recognition from the college.

9. The affected employees meanwhile expressed their dissatisfaction with the union and its officials after failing to trace the union office in Mbale town where they had been directed by the official to visit. That Three workers namely, Rachel Birach, John A. Inzahuli and Janet Sikweya had since withdrawn their membership in writing.

10. That the signature of one Mary Mwanga was not authentic as she was in South Africa at the time the recruitment was done.

11. The dispute was reported to the Minister for Labour and a conciliator was appointed but the dispute was not resolved. The respondent prays that the suit be dismissed for lack of merit.

### **Determination**

12. Both parties filed written submissions and the issues for determination are:

- (i) Whether the applicant has satisfied requirements for recognition under *Section 54(1) of Labour Relations Act*.
- (ii) If the requirements to deduct union dues under *Sections 48(2) of Labour Relations Act* have been met.
- (iii) What reliefs if at all, ought to be granted.

13. The three issues are related and shall be dealt with together. It is not in dispute that the claimant presented a check-off list with 42 names out of the 74 unionsable employees of the respondent. This constitutes 56% of the unionsable employees of the respondent.

14. The respondent has expressed doubt regarding four (4) employees in the list presented. If the court was to give the respondent the benefit of doubt, this still leaves the claimant union with at least 52% of the unionsable employees of the respondent. This number exceeds the 50+1 threshold provided under *Section 54(1)* as the requirement to be met by a union to demand recognition by an employer. Once the threshold is met, the employer is mandated to recognize the union. The court relies on the decision of Abuodha J. in **ELRC Cause No. 1901 of 2015 Kenya Union of Employees of polytechnics college and Allied Institutions (KUEPCA) vs – The Board of Management of Nairobi Technical Training Institute and decision by Wasilwa J. in Kenya Hotels and Allied workers union vs Senturium Kenya Limited and another. ELRC Cause No. 2145 of 2014** for the above proposition of the law.

15. The issue as to whether deductions should commence under *Section 48 (1) and (2)* is a different matter pegged on whether or not the union has obtained relevant mandate from the minister of Labour directing the employer to commence deduction of union dues. This does not impact at all the determination of whether or not the union has recruited as its members a simple majority under *Section 54(1) of Labour Relations Act*.

16. In any event, this matter was conciliated upon by the Ministry of Labour which does not appear to question the authenticity of the check-off forms relied upon by the claimant union to demand deductions of union dues.

17. Accordingly, the claimant has satisfied the court that it has satisfied the requirements of *Sections 54(1) and 48(1) and (2) of Labour Relations Act* and the respondent is bound and is directed to recognize the claimant union forthwith and commence deduction of union dues from the salaries of all the listed members of the claimant in the check-off forms presented to it by the claimant union.

18. In the final analysis the court makes the following orders:

- (a) The respondent is directed to recognize, and sign a Recognition Agreement with the claimant union within 30 days of this judgment.
- (b) The respondent is directed to commence deduction of union dues from the listed members of the union and remit to the designated union account from date of this judgment.
- (c) The respondent to pay the costs of the suit.

**Judgment Dated, Signed and delivered this 7<sup>th</sup> day of March, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Japheth Agura for Claimant Union.

Mr. Musiega for Respondent

Chrispo – Court Clerk