



**REPUBLIC OF KENYA**

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

**CAUSE NO. 266 OF 2018**

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

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

**VERSUS**

**GREAT LAKES UNIVERSITY OF KISUMU..... RESPONDENT**

**JUDGMENT**

1. The dispute between the parties is refusal by management to sign Recognition Agreement. The claimant union filed suit dated 19<sup>th</sup> July 2018 seeking for the following reliefs:

- (a) The respondent be directed to sign the recognition agreement.
- (b) The respondent be directed to stop terminating the employment of claimant's members on flimsy grounds.

**Facts of the claim.**

2. The claimant is a registered union operating in the education sector. That the union has recruited 108 unionsable employees of the respondent which number constitute a simple majority of the current work force of 204. That in terms of *Section 54(1) of the Labour Relations Act, 2007*, the respondent is bound to sign a recognition Agreement with the union.

3. That the respondent has been deducting union dues from the said employees and remitting same to the union as shown under exhibit 1. That the respondent has in fact been deducting union dues from 88 employees from June 2016. A letter by Registrar Administration to that effect was produced as exhibit 2.

4. That the union wrote to the respondent a letter dated 17<sup>th</sup> May 2016 inviting the respondent to a meeting on 2<sup>nd</sup> June 2016 for purposes of signing Recognition Agreement. The management ignored the request. A dispute was reported to the ministry of labour in terms of *Section 62 of Labour Relations Act 2007*. A conciliator was appointed and by a letter dated 23<sup>rd</sup> August 2017, the conciliator invited both parties to a meeting on 17<sup>th</sup> September 2017. That conciliation proceeded on various dates and the conciliator prepared a report dated 19<sup>th</sup> January 2018 produced as Exhibit 6. The conciliator advised the parties to adopt the recommendation in the report.

5. The conciliator recommended that the respondent do recognize the claimant union and sign a Recognition Agreement immediately.

6. The union prays that the court accept the terms of the settlement made by the conciliator and find the case in favour of the claimant union. The conciliator found as a matter of fact that the union had recruited 108 out of 204 members of staff of the respondent.

**Response**

7. In a memorandum of response filed on 15<sup>th</sup> October 2018, the respondent admits that it has been deducting and paying to the claimant union dues in respect of its employees who are members of the claimant. The respondent also admits that it participated in efforts by the conciliator to resolve the dispute amicably.

8. The respondent states that the union has not recruited a simple majority of its unionsable staff. The respondent prays the suit be dismissed with costs.

**Determination**

9. The issues for determination are:

- (i) Whether the union has satisfied the requirement for recognition under *Section 54 (1) of Labour Relations Act*.
- (ii) Whether the union has proved allegations of harassment and dismissal of its members on flimsy grounds.

**Issue a**

10. The documentary evidence tendered by the claimant union which evidence has not been placed in dispute is that the claimant union had recruited 108 staff of the respondent out of 204 current staff. It is not in dispute that the respondent has been deducting union dues in respect of 88 such members, but arbitrarily refused to deduct union dues in respect of the other staff.

11. A conciliation report by the Ministry of Labour confirms that indeed the claimant union had recruited 108 employees out of 204 staff. This report is an official government record that has not been controverted by the respondent. This court finds no reason not to believe the contents of the reconciliation report and the court considers it a useful guide in the resolution of this dispute.

12. Accordingly, the claimant union has proved on a balance of probabilities that it had satisfied the requirements for recognition by the respondent in terms of *Section 54 (1) of Labour Relations Act 2007*. The suit by the claimant has succeeded in this respect and the court directs the respondent to recognize the claimant union immediately.

**Issue b**

13. The claimant has not proved on a balance of probabilities that its members are being unduly targeted for dismissal and this second limb of the claim fails.

14. Accordingly, judgment is entered in favour of the claimant union against the respondent as follows:

- (i) The respondent is directed to sign a Recognition Agreement with the Claimant Union forthwith.
- (ii) Respondent to pay the costs of the suit.

**Judgment Dated, Signed and delivered this 15<sup>th</sup> day of July, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Lincoln Avetsa for the Claimant Union

Mr. Okello for Respondent

Chrispo – Court Clerk