



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE 407 OF 2019**

*(Before Hon. Lady Justice Maureen Onyango)*

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

**VERSUS**

**SCOTT CHRISTIAN UNIVERSITY.....RESPONDENT**

**RULING**

The claimant herein filed this suit vide Memorandum of Claim dated and filed on 24<sup>th</sup> June 2019 seeking the following orders –

1. The court deem fit and find the action of the Respondent of refusal to allow the Claimant union official to access her potential members to be null and void and order the Respondent to allow the Claimant union official to access her premises by meeting her potential members thus recruiting them into joining union.
2. That the Respondent be ordered to comply with Section 48 of the Labour Relations Act, 2007 by way of deducting union dues and remitting the same in the Claimants gazette account.
3. That the Respondent and or her agents be restrained from victimizing, coercing and terminating services of the Claimant members on the ground of trade union activities/affiliation.
4. That the Respondent be bound to sign a recognition agreement and enter into negotiation for Collective Bargaining Agreement with the claimant within 30 days upon conclusion.
5. Any other relief which the Court may deem fit to grant.

2. The Respondent meet the cost of this suit.

Concurrently with the Memorandum of Claim the claimant filed motion under Section 12 of the Employment and Labour Relations Court Act, Sections 56 and 74 of the Labour Relations Act and Rule 17 of the Employment and Labour Relations Court (Procedure) Rules seeking the following orders –

1. That this application be heard ex-parte in the first instance.
2. That this matter be certified as urgent and heard on a priority basis.
3. That prohibitory order be issued against the Respondent restraining herself and or her agents from victimizing her unionize employees and or Applicant members on ground of Trade union affiliation/activities till the hearing and determination of this application.
4. That prohibitory orders be issued against the Respondent to allow the Applicant Claimant to access both potential members till the hearing and determination of this application. By writing a memo, inviting and organizing avenue for union officials to meeting workers at employer's premises.
5. That the court issue an order against the Respondent to comply by mandatory provision of the law (Section 48 of the Labour Relations Act, 2007) by the way of deducting and remitting union dues from the Applicant members who have duly signed the check

off forms pending the hearing and determination of the application.

6. Any other order the court may deem fit to grant.

The application is supported by the grounds on the face thereof and the supporting affidavit of MR. PETER EMISEMBE OWITI, the Secretary General of the claimant.

Mr Owiti deposes that the claimant herein which is a trade union registered under the Labour Relations Act, has been denied access to hold a union meeting at the respondent's premises for purposes of recruitment of potential members. That its letters to the respondent to allow it access as provided under Section 56(3) of the Labour Relations Act have not elicited any positive response from the respondent.

That the application reported a dispute to the Minister of Labour pursuant to Section 62 of the Labour Relation Act and the Minister accepted the dispute, and appointed a Conciliator. That at the meeting called by the Conciliator on 13<sup>th</sup> January 2017, the respondent did not attend but instead sent its advocate Lillian and Koech Associates who placed unlawful hurdles, insisting that if the union wished to visit to university it must first write to the advocate who would then write to the university, who would then write back to the advocate and it is the advocate to communicate with the union.

That the Conciliator issued a certificate of disagreement dated 17<sup>th</sup> March 2017 giving way to the filing of the present suit as provided under Section 69 of the Labour Relations Act.

The respondent was served but failed to attend court on 9<sup>th</sup> July on that date. The court fixed the application for hearing on 30<sup>th</sup> September 2019 and directed that the respondent be served again and an affidavit of service filed. The respondent again failed to attend court on 30<sup>th</sup> September 2019. The application thus proceeded ex parte.

### **Determination**

I have considered the application and the submissions by the claimant. Section 56 of the Labour Relations Act provides as follows—

#### **56. Trade Union Access to Employer's Premises**

**(1) Without limiting the matters that may be dealt with in a recognition agreement, a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employers premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including but not limited to—**

- (a) recruiting members for the trade union;**
- (b) holding meetings with members of the trade union and other employees outside of working hours;**
- (c) representing members of the trade unions in dealings with the employer; and**
- (d) conducting ballots in accordance with the constitution of the trade union.**

**(2) An employer may—**

- (a) impose reasonable conditions as to the time and place of any rights granted in this section to avoid undue disruption of operations or in the interest of safety; and**
- (b) require officials or trade union representatives requesting access to provide proof of their identity and credentials.**

**(3) Any dispute concerning the granting of access, or the conditions upon which access is to be granted, may be referred to the Industrial Court under a certificate of urgency.**

The Claimant/Applicant has demonstrated that its registered constitution allows it to represent workers in Kenya Private Universities. It has further demonstrated that it wrote to the respondent on 17<sup>th</sup> October 2016, 10<sup>th</sup> May and 23<sup>rd</sup> May 2018 and seeking access to the respondent's premises but was denied access.

Both the Constitution at Article 41 and Section 4 of the Labour Relations Act protect the right of employees to form, join and participate in the activities of a trade union. The right of access to employer's premises by trade unions is provided for under Section 56 of the Labour Relations Act.

Having demonstrated that it is the right union and has sought permission from the respondent to access its premises for purposes of recruitment and organising union activities and further having noted the respondent's unresponsiveness thereto including its failure to attend court upon being served, I find no reason to decline the prayers sought by the Claimant/Applicant.

I accordingly grant the following orders –

1. That the respondent be and is hereby directed to allow the Applicant/Claimant access to potential members in its premises for purposes of recruitment and other union activities provided the same takes place outside official working hours or if during working hours, does not interfere with operations of the respondent employees on duty.

2. That the respondent be and is hereby prohibited from victimising any employee who joins and takes part in union activities as allowed under order (1.) above.

3. There shall be no order for costs.

This order to be served upon the respondent together with a penal notice.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF OCTOBER 2019**

**MAUREEN ONYANGO**

**JUDGE**