



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

(Before Hon. Lady Justice Maureen Onyango)

PETITION 112 OF 2018

KENYA TERTIARY AND SCHOOLS

WORKERS UNION (KETASWU).....PETITIONER

VERSUS

THE UNIVERSITY COUNCIL,

UNIVERSITY OF NAIROBI.....RESPONDENT

AND

KUDHEIHA WORKERS.....INTERESTED PARTY

CONSOLIDATED WITH

CAUSE NO. 25 OF 2019

KENYA TERTIARY AND SCHOOLS

WORKERS UNION (KETASWU).....CLAIMANT

VERSUS

THE UNIVERSITY COUNCIL,

UNIVERSITY OF NAIROBI.....RESPONDENT

In the matter of whether the petitioner has locus standi to bring this matter before this court in the matter of interpretation of rules and regulations

RULING

On 9th April 2019, Counsel for the Respondent made an application to have the Petition herein, consolidated with Cause 25 of 2019. Makau J. directed that the matter be mentioned before this Court for directions on hearing and consolidation.

The matter was mentioned on 29th April 2019 when Counsel for the Respondent explained the reason they were seeking consolidation of the two matters. In Cause 25 of 2019, the Petitioner sought to have the termination of 69 employees declared null and void whereas the Petition herein involved the issue of recognition. The key issue was therefore stemming from the fact that the Respondent did not recognize the Petitioner.

Consequently, on 21st May 2019 this Court gave directions that the matters be heard together and directed parties to file their submissions on the issue of *locus standi*. Parties filed their submissions and highlighted them in open Court.

Ms. Mochana, counsel for the Respondent, submitted that the Petitioner was encroaching on the members of the Interested Party and was of the view that where there is a registered trade union, there cannot be encroaching. It was her submission that the Respondent already had a recognition agreement with KUSO, UASU and KUDHEIHA. She was of the view that pursuant to section 14 (b) of the Labour Relations Act, the Petitioner did not have the *locus standi* to represent the Respondent's employees.

She also submitted that at the time of registration, the Petitioner was known as **Kenya Union of Employees of Polytechnics, Colleges, Schools and Allied Institutions**. It changed its name in July 2016 and the membership was expanded to include tertiary and vocational institutions and colleges. As such, if *ejusdem generis* rule is used, colleges would not include universities.

Mr. Maina, for the Interested Party, submitted that Article 41 of the Constitution accords individuals the freedom of association which is actualized in section 14 of the Labour Relations Act. He also submitted that the Interested Party had a recognition agreement with the Respondent. It was his position that the limitations existing in law were in place to ensure there is order amongst trade unions.

Mr. Japheth Agura, for the Petitioner, submitted that counsels for the Respondent and Interested Party had not cited any law that bars the Petitioner from representing the employees of the universities. It was also his submissions that the Petitioner had the *locus standi* to represent the Respondent's employees pursuant to Articles 19, 22, 24 and 41 of the Constitution, section 4 of the Labour Relations Act and the Union's Constitution.

Analysis and Determination

After considering the pleadings and analyzing the submissions by parties,

I find that the issue before this Court is whether the Petitioner has the *locus standi* to represent the Respondent's employees.

Section 54(1) of the Labour Relations Act 2007 provides that-

“An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionizable employees.”

This was clarified by this Court in **Kenya Scientific Research International Technical and Institutions Workers Union v Black and Beauty Products & Another [2018] eKLR** where the Court held-

“A recognition agreement is therefor only necessary for purposes of negotiation of a collective bargaining agreement... Recognition must of necessity be preceded by workers joining membership of a union, as it is only after a union attains membership of a simple majority that it qualifies for recognition. The right to representation is acquired by membership and it is not necessary for a union to be recognized in order to represent its members. In this case the claimant has stated that there is a recognition dispute, Cause No. 1683 of 2014, pending before the court, the claimant has further annexed receipts for union dues and check-off forms signed to prove recruitment of members from among employees of the respondents. I find that the claimant had locus standi to represent the grievants by virtue of membership.”

The Claimant provided as evidence, a Certificate of Change of Name which indicated that its name had been changed from **Kenya Union of Employees of Polytechnics, Colleges and Allied Institutions to Kenya Tertiary and Schools Workers Union**. The Ministry of Labour Gazetted the Change of Name on 20th November 2015 requesting any person objecting to the change of name and constitution to submit the same within 21 days. There is no objection on record.

Under Article III Section 1(v), the membership of the Claimant includes: Colleges: National, University, Medical, Public, Private and Commercial. There are numerous letters of withdrawal of the Respondent's employees from the Interested Party on record. There are also check-off forms from the Respondent's employees authorizing their employer to make union deductions from their salaries.

I find that the allegations raised by Ms. Mochana, Counsel for the Respondent, that the Petitioner's members list could not be trusted because they had not explained the anomalies is not relevant at this stage to determine the *locus standi*. The issue of *locus standi* is to establish whether the Petitioner can represent the Respondent's employees in the suits herein and whether they can seek deduction and remittance of trade union dues by the Respondent through check-off as required under section 48 of the Labour Relations Act.

The issue of whether or not the Petitioner should be recognized will be determined after the Court has had the opportunity to scrutinize and appreciate the evidence presented by parties.

It is my view that at this stage the issue of *locus standi* cannot be determined as it will be one of the substantive issues for determination in the main suit.

The preliminary objection of the respondent therefore fails, as the court would require evidence to determine the issue.

The parties are directed to fix the case of hearing of the substantive suits which as ordered by the court on 21st May 2019, will be heard together.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 11TH DAY OF OCTOBER 2019

MAUREEN ONYANGO

JUDGE