



**REPUBLIC OF KENYA**

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

**E&LRC CAUSE NO. 186 OF 2018**

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

**KENYA TERTIARY & SCHOOLS WORKERS UNION – KETASWU.....CLAIMANT**

**VERSUS**

**THE BOARD OF MANAGEMENT NYANGORI BOYS**

**HIGH SCHOOL.....RESPONDENT**

**J U D G M E N T**

1. The claimant prays for orders directing the respondent to recognize the union in terms of *Section 54(1) of the Labour Relations Act, 2007* and resume deduction and remittance of Union dues to the union.
2. The facts by the claimant are that it had in 2015 recruited 31 out of the 37 unionisable employees of the respondent. That it had submitted check off forms to the ministry and obtained appropriate order for deduction and remittance of union dues by the respondent from its employees who were members of the union.
3. That the respondent had complied with the directive to deduct and remit union dues until the 1<sup>st</sup> February 2017 when the respondent unilaterally stopped full deductions of the union dues.
4. Furthermore, the claimant had served a draft Recognition Agreement to the Respondent and requested the respondent to sign the same to effect recognition of the union as mandated under *Section 54(1) of Labour Relations Act*. That the respondent had declined to recognize the claimant.
5. The claimant reported a dispute to the ministry of labour and a conciliator was appointed to conciliate the dispute.
6. That the conciliator Mr. W.M. Luvavo, made a report upon hearing both parties in which he found that indeed the claimant union had between 29<sup>th</sup> September to October 2015 recruited 31 employees of the respondent as its members. That the current principal of the school intimidated workers and forced them to write letters of withdrawal from the union. That only 6 employees submitted their withdrawal leaving the union with 25 members out of 37 as at 19<sup>th</sup> September 2017, the date conciliation took place. The conciliator further found that one person had indeed written the letters of withdrawal on behalf of the six employees. The principal had invited the union on 11<sup>th</sup> January 2018 to sign the Recognition Agreement.
7. The conciliator recommended that the principal of the school desist from obstructing the union from conducting its lawful activities at the school. That the Principal stop intimidating employees who wished to join and/or remain in the union. That the union be granted access to the school to conduct its lawful activities. That the school grant recognition to the union.
8. The respondent filed a response to the claim on 11<sup>th</sup> June 2018 in which it makes a general denial that any of its employees are members of the claimant union. The respondent also denies that it had ever deducted and remitted union dues to the claimant union. Respondent further denies having received a Recognition Agreement from the claimant. Further respondent denies having been called to a conciliation meeting. Respondent prays the suit be dismissed.

**Determination**

9. The court has considered the facts deposed to in the sworn affidavit of Japheth Anyira Agura and the documentary evidence attached to the statement of claim including the check –off forms dated 29<sup>th</sup> September 2015, and the list of names therein, the report of the conciliator dated 19<sup>th</sup> March 2018 and the certificate of unresolved dispute dated 23<sup>rd</sup> March 2018 and has come to the finding that the claimant union had

satisfied the requirements of Section 54(1) of Labour Relations Act in recruiting 31 out of the 37 unionisable employees of the respondent. That the principal of the respondent had commenced the check-off deductions which took place until the new principal stopped the same in 2017.

10. The court finds that the respondent is mandated not only to continue deducting dues from the union members but also to immediately sign the Recognition Agreement served on it by the claimant union.

11. The court finds that the respondent only made bare denial in its statement of defence which is not supported by either oral, affidavit, or documentary evidence to rebut the facts placed before court by the claimant.

12. The court therefore finds that the claimant union has proved its case on a balance of probabilities. The case by the claimant is supported by **KUDHEIHA Workers union vs Agakhan University Hospital, E&LRC at Nairobi, [2015] eKLR** in which Wasilwa J. found

*“Respondent’s failure to deduct and remit union dues of employees who joined the union infringed on their right under Article 41 of the constitution and I order that the respondent do forthwith deduct and remit union dues”.*

13. The claimant’s case is further buttressed by **NRB E&LRC Cause No. 1901 of 2015, Kenya union of Employees of Polytechnics, Colleges and allied Institutions (KUEPCA)** in which Abuodha J. N. directed the respondent that had failed to sign a Recognition Agreement upon the claimant union recruitment of a simple majority of its unionisable employees to do so forth with.

14. Accordingly, the court directs the respondent to:

- (a) Deduct and remit union dues from all the 31 employees who are members of the union forth with.
- (b) The respondent to sign a Recognition Agreement with the claimant union within 30 days of this judgment.
- (c) Each party to bear their own costs of the suit.

**Judgment Dated, Signed and delivered this 8<sup>th</sup> day of October, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Patrick Mwavali, Secretary General of the Union.

Ondego Caro Advocates for the Respondent

Chrispo – Court Clerk