REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

CAUSE NO. 61 OF 2018

KENYA UNION OF DOMESTIC, HOTELS,

EDUCATIONAL INSTITUTIONS & HOSPITAL WORKERS....CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT OF

ANTUAMBUI HIGH SCHOOL……………….....……………...RESPONDENT

RULING

1. The Respondent's preliminary objection is to the effect that the Claimant has no *locus standi* to file this suit on behalf of the Grievants Francis Kerimania and Brown Kinoti seeking their reinstatement. The Respondent asserts that in terms of Sections 2 and 54 of the Labour Relations Act, there must be a recognition of the unionization that is permitted in law. The Respondent asserts that it has no recognition agreement with the Claimant union and that therefore there is no *locus standi* for the Union to act for the employees of the Respondent.

2. The Claimant asserts in reply that there was a recognition agreement signed on 18th March 1986 between the Claimant and the Ministry of Education and that it is binding on all public institutions and therefore any insinuation that there is no *locus standi* is misplaced. The Claimant argues that the statements supporting the CBA are signed by the Ministry of Education and that there is a binding agreement.

3. The parties opted to have the preliminary objection determined on the basis of the documents filed and the submissions of parties. The Respondent submitted that the Claimant has no *locus standi* to file this suit on behalf of the Grievants Francis Kerimania and Brown Kinoti as there is no recognition agreement or CBA in force. The Respondent asserts that in terms of Sections 2 and 54 of the Labour Relations Act, there must be a recognition of the union as per the law.

4. The Claimant submitted that there was a recognition agreement signed on 18th March 1986 between the Claimant and the Ministry of Education which is binding on all public institutions. It argued that any insinuation that it lacks *locus standi* is misplaced.

5. As the issue relates to recognition and the right to representation, an exposition of Section 2 and 54 of the Labour Relations Act is important. Section 2 which is the interpretation Section of the Act provides in the material part that *"recognition agreement" means an agreement in writing made between a trade union and an employer, group of employers or employers' organisation regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers' organisation;* This means that there must be an agreement in writing between the employer and the trade union. The material parts of Section 54 provide as follows:-

> *54.(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.*
>
> *(2) A group of employers, or an employers' organisation, including an*
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> *organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.*
>
> *(3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.* (underline mine)

The Respondent asserts that it has no agreement with the Claimant and that therefore the Claimant is not qualified to represent the 2 Grievants. I have perused the Education (Board of Governors) Non-Teaching Staff) Regulations, 1993 and established that the Regulations have certain amendments such as Rule 4 that have been deleted. Under the Education Act 2012, the law in regard to recognition is stated in Section 17 which provides that a Board may enter into an agreement for recognition with any trade union competent to negotiate terms and conditions of service for and on behalf of any section of the employees of the Board, and the Board shall sign such agreement on its own behalf. This is a marked difference from the situation in 1986 when the late Hon. Daudi Mwiraria then Permanent Secretary Ministry of Education, Science and Technology signed the agreement the Claimant relies on. Trade unions are to be recognized by the Board and this seems not to have been done. As there cannot be a blanket recognition agreement in this day and age, the provisions of Section 17 of the Education Act have not been met neither have the provisions of Section 54 been met. As such the Claimant lacks the *locus standi* to institute the suit on behalf of the Grievants. Granted the dispute is live and it is only the status of the Claimant usurping the role of the Grievants duly named in the suit, I will strike out the name of the Claimant and substitute the 2 Grievants as the Claimants herein with Francis Kerimania being the 1st Claimant and Brown Kinoti the 2nd Claimant. The former claimant KUDHEIHA is to personally pay the Respondent the costs for the preliminary objection.

It is so ordered.

Dated and delivered at Nyeri this 5th day of December 2019

Nzioki wa Makau

<u>JUDGE</u>