



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 668 'B' OF 2014

(Before Hon. Lady Justice Maureen Onyango)

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS AND
HOSPITAL WORKERS (KUDHEIHA).....CLAIMANT**

-Versus-

PRIMARY BOYS BOARDING SCHOOL.....RESPONDENT

JUDGMENT

Issue in Dispute: Refusal by Management to Sign Recognition Agreement

THE CLAIM

The Claimant is a trade union registered in Kenta under the Labour Relations Act with mandate to represent employees engaged in inter alia, Educational Institutions. According to the Memorandum of Claim, the Respondent is described as a public boys boarding primary school established under section 55(1) of the Basic Education Act 2013. Again according to the Memorandum of Claim the Respondent's Board is charged with the Responsibility of employing non-teaching employees.

It is the Claimant's case that between 8th and 12th March 2012 it recruited 10 members through check-off form system and that this constituted 100% of unionisable employees of the Respondent. Copies of the forms are annexed as Annex 1 to the Claim. The Claimant avers that on 10th April 2012 its Secretary General prepared a list of the 10 members and sent an authority to deduct union dues to the Respondent's Head Teacher advising her to start deducting and remitting union dues to the Claimant union effective April 2012 and the Head Teacher complied.

The Claimant avers that on 3rd October 2012 it sent recognition forms to the Respondent's Head Teacher advising her and the Board of Management to study and understand the contents of the document in preparation of a meeting on 19th November 2012 to sign the Recognition Agreement. That the union officials visited the school as proposed but on arrival they were informed by the secretary to the Head Teacher that the Head Teacher was bereaved and was away at home making funeral arrangements for the deceased relative.

It is the Claimant's averment that the union officials wrote a reminder to the Head Teacher on 8th January 2013 proposing to meet the school management on 24th January 2013 to sign the recognition agreement but on the material day although the Head Teacher was present she had not prepared for the signing of the recognition agreement.

The union avers that following the failure of the Respondent to sign the agreement it reported a trade dispute to the Cabinet Secretary Ministry of Labour and Social Security Services on 5th October 2013. The Minister accepted the dispute and appointed Mr. M. N. Kirera of Kajiado Labour Office as Conciliator. The Conciliator invited the two parties for a meeting in his office on 18th December 2013 vide letter dated 20th November 2013. The Union officials attended the meeting but the school management failed to attend. On 26th February 2014 the Conciliator issued a certificate of failure of the conciliation allowing the Claimant union to move to court.

The Claimant prays for orders that the Respondent be ordered to sign recognition agreement with the Claimant, costs and any other relief the court deems fit to grant.

The Respondent were served with the Memorandum of Claim and Notice of Summons through post office box number 42 Kajiado on 13th May 2014 as evidenced by the affidavit of service sworn by Joseph Muia the process server but did not respond. The case was heard on 27th November 2017. Mr. Charles Kyalo, an Industrial Relations Officer appeared for the Claimant. There was no appearance for the Respondent who had been properly served with a hearing notice.

The Claimant relied entirely on the Memorandum of Claim and documents annexed thereto.

Determination

I have considered the averments in the Memorandum of Claim and the documents annexed thereto. The issue for determination is whether the Claimant Union has attained the requirements for recognition. Section 54 of the Labour Relations Act provides for recognition as follows-

“54. Recognition of trade union by employer

(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 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.

(4) The Minister may, after consultation with the Board, publish a model recognition agreement.

(5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.

(6) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.

(7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.

(8) When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister.”

As pleaded in the Memorandum of Claim the Claimant recruited all unionisable employees of the Respondent who acknowledged the same by deducting and remitting union dues as provided in section 49 of the Act. There having been no response to the Memorandum of Claim, there is no denial of the averments in the Memorandum of Claim, which the court therefore accepts as the factual position.

I find that the Claimant has met all the requirements for recognition according to section 54 of the Act being that it is the proper union, there is no rival union claiming to represent the non-teaching staff of the Respondent and it has recruited more than a simple majority.

Conclusion

I find that the Claimant has proved its case and hereby order the Respondent to sign recognition agreement with the Claimant within 30 days.

There shall be no orders for costs.

DATED, SIGNED AND DELIVERED ON THIS 26TH DAY OF JANUARY 2018

MAUREEN ONYANGO

JUDGE