



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 1901 OF 2015

KENYA UNION OF EMPLOYEES OF POLYTECHNICS,

COLLEGES AND ALLIED INSTITUTIONS (KUEPCA)...CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT,

NAIROBI TECHNICAL TRAINING INSTITUTE.....RESPONDENT

JUDGEMENT

1. By motion dated 19th October, 2015, the claimant sought orders that the Honourable Court issues declaratory orders that the parties herein sign a recognition agreement forwarded to the respondent by a letter dated 28th April, 2014 for purposes of collective bargaining.
2. According to Mr Japheth Anyire Agura, who described himself as the Secretary General of the claimant union the claimant organized and recruited employees of the respondent into its membership through check off forms under section 48 of the Labour Relations Act. The claimant served the said forms upon the respondent on 2nd April and 14th August, 2014 and the respondent duly acknowledged receipt of the check off forms. According to Mr Agura, the respondent was therefore obligated to recognize the claimant for purposes of collective bargaining. Efforts to resolve the dispute by conciliation through the Ministry of Labour, Social Security Services failed due to the respondent's refusal to attend conciliation meetings.
3. The respondent filed a replying affidavit through one Fredrick Magua who deponed among others that the claimant had failed to supply the respondent with a certificate of registration, copy of its constitution and rules, returns filed with the Registrar of Trade Unions confirming the registered officials of the claimant.
4. According to Mr Magua, he was therefore unable to admit or confirm whether Mr Agura was indeed a registered official of the claimant. Mr Magua further stated that he was aware the claimant had recruited 21 out of 51 unionisable employees of the respondent and this was readily apparent that the number of members recruited by the claimant did not constitute a simple majority of the total number of the respondent's unionisable employees.
5. Mr Magua further stated that it was not true that the respondent had refused to attend conciliation meetings organized by the conciliator appointed by the Ministry of Labour.
6. The letter dated 30th June, 2015 addressed to Mr A. K. Nyaga the conciliator refuted that the respondent had refused to sign the recognition agreement. The letter further stated that on 19th June, 2015 the claimant's officials failed to go to the respondents premises for purposes of signing the recognition agreement in the presence of the Chairman of the Board of management.
7. Whereas the respondent has stated that it had asked severally from the claimant to be furnished with a copy of the claimant's constitution and returns from Registrar of Trade Unions confirming the claimants' registered officials prior to signing the recognition agreement no evidence of such request has been produced before the court.
8. This fact together with the letter dated 30th June, 2015 shows that there is no valid reason why the respondent should not sign the recognition agreement with the claimant for purposes of collective bargaining. An employer is under obligation to sign a recognition agreement once a union has fulfilled the requirements of section 54 of the Labour Relations Act.
9. The court therefore directs that the respondent forthwith signs the recognition agreement with the claimant for purposes of collective

bargaining.

10. It is so ordered.

Dated at Nairobi this 9th day of February 2018

ABUODHA J. N.

JUDGE

Delivered this 9th day of February 2018

In the presence of:-

.....for the claimant

.....for the Respondent

ABUODHA J. N.

JUDGE