



**REPUBLIC OF KENYA**

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

**CAUSE NO. 80 OF 2014**

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

**KUDHEHIA WORKERS.....CLAIMANT**

**VERSUS**

**VIHIGA BOYS HIGH SCHOOL.....RESPONDENT**

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

1. The suit was filed by a Memorandum of Claim on 13<sup>th</sup> May, 2014. The Claimant seeks an order that the court compel the Respondent to negotiate Collective Bargaining Agreement in terms of section 57 of the Labour Relations Act, 2007.
2. The Claimant states that it is a registered union operative in the education sector. That the Claimant union signed a Recognition Agreement with the Respondent on 18<sup>th</sup> July, 2012. The document duly signed by the parties was produced as App. '2' to the Memorandum of Claim.
3. In terms of clause 2 and 3 of the Agreement, parties are bound to negotiate wages, terms and conditions of service between the Board of Governors now Board of Management and the Claimant Union.
4. The Claimant Union sent to the secretary to the Board a letter dated 28<sup>th</sup> August, 2012, App. '3' to which the union attached proposal for negotiation of a Collective Bargaining Agreement. The draft proposal is before court. The Respondent took no action and a reminder was sent on 31<sup>st</sup> October, 2012 marked App. '4' and 18<sup>th</sup> January, 2013 App. '5'.
5. The Respondent took no action and dispute was reported to the Ministry of Labour on 12<sup>th</sup> March, 2013. Under section 57(1) of the Labour Relations Act, 2007 (LRA). Conciliator was appointed (Mr. George Abuto) from Kakamega Labour Office and parties were requested to make their submissions. The Claimant submitted their proposals to the conciliator on 15<sup>th</sup> March, 2013.
6. The Respondent failed to make their submissions to the conciliator and a certificate of unresolved dispute was issued on 13<sup>th</sup> May, 2014 hence the suit.

**Defence**

7. The Respondent school, filed a Defence to the Memorandum of Claim on 7<sup>th</sup> July, 2014.
8. The Respondent made bare denial to the statement of claim and did not provide any useful challenge to the Recognition Agreement signed by both parties before court.

**Interested Party**

9. The Kenya tertiary & Schools Workers Union (KETASWU) joined the suit as an interested party and filed its response to the claim on 7<sup>th</sup> May, 2018 about four (4) years from the date the suit was filed. The union states it was registered to operate in the education sector and got its certificate of registration on 21<sup>st</sup> January, 2014.
10. The interested party states that in September 2015, it registered 32 unionsable employees of the Respondent and 3 more in October 2017 and has 35 members who are staff of the Respondent. The interested party has submitted check off forms to the court to back up this allegation. The interested party has not purported to have and has not presented any Recognition agreement between it and the Respondent.

11. The Union states that the Respondent deducts union dues from members and submits to the interested party.
12. The interested party has not made any specific prayers and or any counter claim in its memorandum of defence.

**Determination**

13. The only party that has made specific prayers to this court in this matter for a directive to have the Respondent to respect the Recognition Agreement between the Claimant Union and the Respondent is the Claimant.
14. The Respondent prays for the suit to be dismissed and as observed by the court made bare denial in its statement of defence.
15. The interested party has not claimed that it has a Recognition Agreement with the Respondent and has not made any prayers to this court to direct the Respondent to recognize it.
16. The issues before court therefore are:-

- (i) Whether there is a valid Recognition Agreement between the Claimant and Respondent.
- (ii) If the answer to (i) is in the affirmative, whether the Respondent is bound to conclude a Collective Bargaining Agreement with the Claimant Union.
- (iii) If the interested party has any locus standi in this matter.

**Issue (i) & (iii)**

17. The court will deal with issues (i) & (iii) together. From the facts before court the Claimant concluded a valid Recognition Agreement with the Respondent in terms of section 54(I) of LRA on 18<sup>th</sup> July, 2012. In terms of clause 2 and 3 of that Agreement as read with section 57(I) of LRA, the Respondent is bound by the Agreement and the Law to conclude a Collective Agreement with the Claimant Union.
18. Section 57(I) speaks in mandatory terms thus –

***“An employer group of employers or an employers’ organization that has recognized a trade union in accordance with the provisions of this part shall conclude a collective agreement with the recognized trade union setting out terms and conditions of service for all unionsable employees covered by the recognition agreement.”***

***(emphasis mine)***

19. To this end, the Claimant has proved its case on a balance of probabilities that it is recognized by the Respondent and the Respondent is bound to conclude a CA with it failing which, the Union to present an economic dispute before court for determination. That is what the Claimant union should have done in the first place and has wasted valuable time in this respect.

**Issue (ii)**

20. The interested party has no Recognition Agreement with the Respondent and has not made any specific prayers to this court for consideration.
21. Accordingly, the claim is granted as prayed and the following orders made:-

- (a) The Respondent has a Recognition Agreement with the Claimant union and is bound by Section 57(I) of LRA to negotiate and conclude a Collective Bargaining Agreement with the Claimant Union.
- (b) The Claimant Union is the only recognized union by the Respondent and the claim by the interested party has no basis in law and fact.

**Judgment Dated, Signed and delivered this 25<sup>th</sup> day of October, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. John Obina for the Applicant

Mr. Mukabi for Respondent

