



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 2299 OF 2014

KENYA PRIVATE UNIVERSITIES WORKERS UNION.....CLAIMANT

VERSUS

THE AGAKHAN UNIVERSITY.....RESPONDENT

RULING

1. The respondent herein raised as preliminary an objection to the effect that the claimant had no *locus standi* to commence or maintain the suit in relation to the dispute. In support of the objection counsel for the respondent submitted that it informed the claimant that it already had a recognition agreement with another trade union and that they required the claimant to provide proof of their identity and credentials as required under Section 56(2) of the LRA by providing a copy of the claimants' constitution to ascertain that they could indeed recruit members from the institution.
2. The matter was thereafter escalated to conciliation where the respondent stated that it had not refused to grant access to the applicant union but that the union was seeking the respondent's assistance to recruit members on their behalf. It was the respondent's contention that it was not its responsibility to assist any union in the recruitment of members.
3. The respondent further contended that it had not received a copy of a certificate of unresolved dispute from the conciliator and is unaware if in fact one was issued. The respondent further submitted that access to the employer's premises by a trade union is governed by the recognition agreement yet in the instant case no recognition agreement has ever been entered into with the claimant union.
4. The claimant union on its part submitted that the claimant wrote several letters to the respondent over the issue of access, recruitment of eligible and potential members and after the respondent remained adamant the issue was reported to the Minister for conciliation. A conciliator by the name Ms Otieno was appointed and parties made their representation. The conciliator thereafter made her recommendations and thereafter issued a certificate of unresolved dispute on 31st August, 2017. The claim that the claimant came to court prematurely therefore had no basis.
5. The dispute between the parties seem to be over access to the respondent's premises by the claimant union for purposes of recruitment of members for purposes of recognition and collective bargaining eventually. The respondent seem to be of the view that in absence of a recognition agreement it cannot allow the claimant union access to its premises to recruit members. The respondent has further claimed that it has recognition agreement with another union hence cannot deal with the claimant with whom it has no recognition agreement.
6. Section 54(1) and (2) of the LRA obliges an employer or a group of employers to recognize a trade union for purposes of collective bargaining if that union represents the simple majority of unionisable employees.
7. The Act is silent on access to before recognition agreement however a reading of section 56(1) could provide a solution to the apparent lacuna in the law. The section provides that a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employer's premises for union officials or authorized representatives to pursue the lawful activities of the trade union including recruiting members,
8. What this implies is that recruitment of members before recognition agreement is reached to attain a simple majority need not occur on the employers premises. The union has the liberty to recruit members outside working hours away from employer's premises and once a simple majority is attained the union can conform the employer for recognition. The court appreciates the possibility of work disruption where a union with no recognition agreement is allowed to enter employers' premises to recruit members in order to attain the requisite simple majority for purposes of recognition.
9. Further, in cases like this one, an employer already engaged in a recognition agreement would naturally be reluctant to allow another union to enter its premises for the same purpose. Nothing however prevents an employer who out of its own will allows a union yet to sign a

recognition to enter its premises to recruit members for the purposes of attaining the requisite simple majority for entry into a recognition agreement. There is however no obligation to do so.

10. In the circumstances, the court will uphold the objection and direct that the claimant use other ways to recruit members in the respondent's employment for purposes of attaining the necessary simple majority for recognition since the law as it stands now places no obligation on an employer to allow a union without which it has no recognition agreement to access an employer's premises to recruit members in order to enter a recognition agreement.

11. It is so ordered.

Dated at Nairobi this 5th day of October, 2018

Abuodha Jorum Nelson

Judge

Delivered this 5th day of October, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.