



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NO 2211 OF 2017**

**KENYA TERTIARY AND SCHOOLS WORKERS UNION.....CLAIMANT**

**VERSUS**

**THE NATIONAL POLYTECHNIC COUNCIL,**

**THE KABETE NATIONAL POLYTECHNIC.....RESPONDENT**

**RULING**

1. By a motion dated 6<sup>th</sup> November, 2017 the claimant sought orders among others that the respondent commences deduction of trade union dues from salaries of the unionisable employees who have acknowledged their union membership with the claimant and remit such deductions to the claimant. The claimant further sought that the respondent be compelled to pay from its kitty all the sums due and owed to the claimant union as union dues, which the respondent would have deducted and remitted regularly for the 72 union members on the check-off forms dated 29<sup>th</sup> February, 2016 and 18<sup>th</sup> April, 2017.
2. The application was supported by the affidavit of one Japheth Anyira Ogura who stated that he was the Secretary General of the claimant union. The application was further based on the ground that the union had duly organized and recruited 72 unionisable staff of the respondent through check-off forms and that the number recruited had surpassed the simple majority rule under the provisions of section 54(1) of the Labour Relations Act hence the union qualified to be recognized by the respondent for collective bargaining purposes. The claimant further contended that efforts to resolve the dispute through the Minister by conciliation failed due to respondent's cunning approach to the issues.
3. The respondent opposed the application and filed a replying affidavit through one Moses Ndungu who stated he was the Finance Officer of the respondent. Mr Ndungu deposed among others that the respondent's unionisable employees are members of KUDHEIHA an existing trade union with which the respondent signed a recognition agreement in October 2015.
4. He further stated that contrary to the assertion that it had recruited 72 members only 40 of the respondent's employees had signed the check-off forms and further that the employees did not follow the modalities of leaving a trade union as outlined under Section 48(7) and (8) of the Labour Relations Act which required the employee to notify the employer in writing that they had resigned. Mr Ndungu further deposed that the respondent could not effect the deductions as they were remitting the same to KUDHEIHA.
5. A recognition agreement is for purposes of collective bargaining. The respondent has stated that this has not been denied by the claimants that there is in existence a recognition agreement between itself and KUDHEIHA. An employer cannot have a recognition agreements with two unions in the same sector. This would obviously cause conflict and confusion. The respondent's relationship with KUDHEIHA preceded the claimant. It cannot just be tossed over because a new union alleges to have recruited members which are common to both rival unions.
6. That is not to say KUDHEIHA has monopoly over representation of the respondent's employees. Workers are free to change unions but this has to be done in a structured manner. This is the intention of section 48 (7) and (8) of the Labour Relations Act, which requires that a notice of resignation from a union is to take effect one month from the date of the notice and that a copy of the resignation notice be forwarded by the employer to the union.
7. The applicant union appears to have overlooked this important requirement. In bringing this application the claimant union has totally ignored the interest KUDHEIHA may have in these proceedings and has not even alluded to the fact that they be joined as interested parties to allow for comprehensive adjudication of the dispute.
8. The claimant union has stated that the conciliation of this dispute failed by reason of the fact that the dispute remained unresolved after thirty days from the date of appointment the conciliator which was occasioned by what the respondent described as the cunning tactics of the

respondent. Whereas this court does have jurisdiction to entertain unresolved trade disputes such jurisdiction ought not to be invoke capriciously and through cunning behavior of any party.

9. This to me is a straight forward dispute which revolves around which union should represent the respondent's employees for purposes of collective bargaining. The issue of deduction and remission of membership dues cannot be delve d into until the issue of which union is the legitimate union to represent the respondent employees for purposes of collective bargaining is resolved first.

10. In the circumstances, the court hereby orders that KUDHEIHA workers be enjoined in this dispute and the same is hereby resubmitted to the Cabinet Secretary Labour to appoint a conciliator to attempt to resolve the dispute within 60 days from the date of this ruling and file a report with the court.

11. KUDHEIHA workers be served by the court with a copy of this ruling. The matter is set for mention on .....day of .....2018 for further directions.

12. It is so ordered.

Dated at Nairobi this 30<sup>th</sup> day of November, 2018

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 30<sup>th</sup> day of November, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.