



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 395 OF 2015

BETWEEN

KENYA UNION OF DOMESTIC, HOTELS,

EDUCATIONAL INSTITUTIONS AND HOSPITALS

WORKERS UNION [KUDHEIHA].....CLAIMANT

VERSUS

BOARD OF MANAGEMENT, WAA BOYS HIGH SCHOOL.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Claimant Union in Person

No appearance for the Respondent

JUDGMENT

1. The Claimant Union filed its Statement of Claim, on the 15th June 2015. It seeks to have the Respondent compelled to negotiate a Collective Bargaining Agreement.
2. The Respondent did not file any Response to the Claim, and failed to attend Court. There are Affidavits of Service filed by the Claimant showing the Respondent was notified.
3. The Respondent signed a Recognition Agreement with the Claimant, under the coercive power of a Court Order, on 19th May 2014.
4. Subsequently, the Claimant forwarded a draft CBA to the Respondent for consideration in June 2014. There was no response from the Respondent.
5. The Claimant reported the existence of a dispute to the Cabinet Secretary for Labour, under the Labour Relations Act. A Conciliator was appointed, and proceeded to invite Parties for conciliation meetings.

The Respondent neither attended these meetings, nor sent its proposals to the Labour Office.

6. In the end the Conciliator issued a Certificate of Disagreement, paving the way for institution of this Claim.

The Court Finds:-

7. The Respondent recognized the Claimant Union, only after the intervention of the Court. Subsequently, the Respondent was invited by the Claimant Union to negotiate CBA. There was no response from the Respondent. There was report made to the Minister on the presence of a dispute. A Conciliator was appointed and set in motion the conciliation mechanism. The Respondent adamantly gave the process a cold shoulder.

8. It is the view of the Court that the Respondent is an Employer who will not submit to industrial relations structures, without being coerced through a judicial command.

IT IS ORDERED:-

a) The Respondent shall enter into Collective Bargaining Agreement Negotiations with the Claimant Union, and come up with a CBA within 90 days of this Judgment.

b) Costs to the Claimant.

Dated and delivered at Mombasa this 24th day of February 2017.

James Rika

Judge