



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 27 OF 2013

(Originally Nairobi Cause No. 517 of 2012)

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS, HOSPITALS AND ALLIED WORKERS.....CLAIMANT

v

UPPER HILL MIXED SECONDARY SCHOOL.....RESPONDENT

RULING

1. In a judgment delivered on 8 May 2015, the Court ordered the Respondent to grant recognition to the Claimant Union within 30 days.
2. The judgment came after the Court had fixed the Cause for hearing in the presence of Mr. Onwonga, Industrial Relations Officer for the Union and Mr. Karanja for the Respondent.
3. The Respondent and its counsel never attended the hearing.
4. On 10 July 2015, the Respondent filed a motion under certificate of urgency seeking
 2. THAT pending the hearing and determination of this application *inter partes* this honourable court be pleased to stay execution of the judgment dated and delivered on 8th May, 2015 and all consequential orders thereof.
 3. THAT this honourable court be pleased to review its judgment dated 8th May, 2015 and all consequential orders thereof and make such orders as it shall deem just in light of this application.
5. The Court directed the motion to be served but the Union failed to file any replying affidavit or grounds of opposition. However, the Court allowed the Union to tender submissions in reply to the Respondent's submissions.
6. Prayer 2 sought temporary stay pending the hearing of the motion *inter partes*. Now that the motion has been heard *inter partes*, it becomes spent and does not merit any further consideration in this ruling.
7. That leaves prayer 3 of the motion as the only substantive prayer for determination.
8. According to the Respondent, the Union was entitled to recognition by virtue of Legal Notice No. 263 of 1993 and that the Legal Notice had become obsolete with the enactment of the Basic Education Act No. 14 of 2013 which introduced free secondary education.
9. The Respondent also advanced an argument that the Basic Education Act, 2013 did not clothe Boards of Management of schools with the power to enter into recognition agreement with Unions, and that such power had now been given to the Cabinet Secretary responsible for

Education.

10. The Respondent also urged that a Board of Management for the Respondent/School had not been constituted, and therefore a recognition agreement could not be granted to the Union.
11. The Respondent also made feeble attempts to urge that because of free schooling and the fees caps, it would not be able to meet any financial obligations arising out of the recognition agreement.
12. In a brief response, the Union contended that pursuant to section 101 of the Basic Education Act, 2013, the relevant provisions of the Education Act (repealed) on power to enter into recognition agreements had been saved.
13. The Union therefore posited that Legal Notice No. 263 of 1993 was still in force.
14. In an address from the bar on an issue of fact, Mr. Onwonga for the Union stated that the Respondent's Board of Management was already in place and that it had actually met on 16 October 2015.
15. The jurisdiction of this Court to review its judgments and orders is wider than that of the High Court obtaining under the Civil Procedure Rules, in that this Court can review a judgment on the ground that it is against or contrary to a written law.
16. I take it that this is the ground the Respondent sought to rely on though it did not make express reference to it.
17. The statutory foundation for recognition agreements is located in section 54 of the Labour Relations Act and it obligates an employer to recognise a union which has achieved a simple majority membership.
18. The Respondent did not dispute that the Union had met the statutory threshold for recognition.
19. The Union here recruits from among the non-teaching staff in schools and it is public knowledge and a matter of notoriety that the majority of these employees are employed by Boards of Management.
20. In this regard, the employer for purposes of the Labour Relations Act/Employment Act, 2007 remains and is the Board of Management and not the Cabinet Secretary.
21. This position is given legal backing by section 59(p) of the Basic Education Act which clothes the Board of Managements with the power to recruit, employ and remunerate non-teaching staff.
22. It is the employer who is clothed with the legal competence to enter into recognition agreements under the statutory scheme in place currently.
23. The Court notes that the Respondent did not cite the particular provision of the Basic Education Act, 2013 empowering the Cabinet Secretary, Education to enter into recognition agreements with Unions.
24. The Court therefore finds no legal substance in the contention by the Respondent that it is the Cabinet Secretary who can enter into a recognition agreement rather than the respective Boards of Management of public schools.
25. It is also equally untenable for the Respondent to advance the position that Legal Notice No. 263 of 1993 has been revoked in view of the clear general saving provisions of section 101(2) and (4) of the Basic Education Act, 2013.
26. The argument by the Respondent that there was no Board of Management in place and therefore the judgment could not be enforced was a red herring.
27. For one, the Respondent should have attended the hearing to advance that position as it must have been aware of such a fact of there being no Board of Management in place.
28. Two, if the line advanced by the Respondent had substance, it would mean that there was no legal entity in place to instruct the Respondent's advocate to bring the motion under consideration.
29. But on a more substantive note, the Union has not moved to execute the judgment for failure to grant recognition. Once the Board of Management is in place, if it is already not in place, it would be under an obligation to do the needful to avoid being cited for contempt.
30. On the question of finances and costs, recognition agreement, by itself would not lead to any adjustment in fees or costs and it cannot be directly relevant in the instant case. Question of costs and finances become relevant only when a collective bargaining agreement has been concluded. And that is still a far way off.
31. The upshot of the foregoing is that the Respondent's motion filed in Court on 10 July 2015 is devoid of merit and it is dismissed with costs of Kshs 20,000/- to the Union.

Delivered, dated and signed in Nakuru on this 22nd day of January 2016.

Radido Stephen

Judge

Appearances

For Union Mr. Onwonga, Industrial Relations Officer, KUDHEIHA

For Respondent Mr. Kahiga instructed by Mirugi Kariuki & Co. Advocates

Court Assistant Kosgei