



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1515 OF 2012

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATION INSTITUTIONS, HOSPITALS AND
ALLIED WORKERS (KUDHEIHA) CLAIMANT**

VERSUS

**THE BOARD OF GOVERNORS,
MOI GIRLS HIGH SCHOOL, NAIROBI RESPONDENT**

Mr. John Obima for claimant

Mr. Melly for respondent

JUDGMENT

1. This suit was filed on 29th August 2012.
2. The issue in dispute is refusal by management of the respondent to remit union dues and to sign a recognition agreement.
3. The claimant is a registered trade union operating within the Education sector.
4. The claimant alleges that it recruited sixty three (63) workers who comprise non-teaching and subordinate staff in the school.
5. By a letter dated 24th January 2012, the claimant wrote to the respondent to commence deducting union dues in terms of section 19 (1) of the Employment Act, 2007. Attached to the letter were check-off forms signed by the sixty three (63) employees.
6. That the respondent deducted dues from the employees but did not remit to the claimant union.
7. That on 14th February 2012, the claimant forwarded a model recognition agreement to the respondent for signing but the respondent declined to do so.
8. The claimant prays that;

- a) the respondent be compelled to pay deducted union dues for sixty three (63) workers at the rate of Kshs.150 per month for five months in the sum of Kshs.47,250;
- b) interest on the amount;
- c) the respondent be compelled to sign the recognition agreement in terms of section 54 (1) of the Labour Relations Act, 2007.

Response

9. In its response filed on 12th September 2013, the respondent states it has 128 unionsable workers and the claimant had recruited sixty three (63) employees who do not constitute a simple majority of the total unionsable employees.
10. Furthermore, employees seconded from Ministry of Education cannot be included in the unionsable number because their terms and conditions of employment are not negotiated for by the union.
11. That the salaries of employees are paid from parents collections and cannot therefore be regulated.
12. The respondent therefore submits it is entitled to decline to comply with the deductions sought and recognition of the claimant union.
13. The respondent prays that the application be dismissed with costs.

Determination

14. The issues for determination are;
 - a) Whether the respondent is obliged to deduct and remit union dues in respect of the 63 recruited members;
 - b) Whether the respondent is obliged to recognize the claimant union.

Issue i

15. The conditions precedent for an employer to deduct and remit union dues from its employee are that;
 - a) the employee is unionsable;
 - b) the employee has freely and voluntarily joined the particular union;
 - c) The cabinet secretary in charge of Employment and Labour has issued an order to allow the deductions.
 - d) The union has served a notice of deduction in form 5 set out in the Third Schedule of the Labour Relations Act No. 14 of 2007. (LRA)
16. The claimant duly served the check-off system form (5) duly completed and signed by the 63 employees named in this suit, together with the notices signed by the secretary general of the claimant union Mr. Albert Njeru. The deduction was due to commence from February 2012.
17. The respondent has not refuted these facts and the court finds that the claimant has proved on a balance of probability that it had complied with the requirements under section 48 (2) and (3) of the LRA Act.
18. The respondent is therefore obliged to commence deducting the union dues and remit to the claimant

union forthwith it being not in dispute that this is the appropriate union for the sector.

Issue ii

19. The recognition of a union is governed by section 54 of LRA. The section obliges an employer to recognize a union upon the union recruiting a simple majority of its unionsable employees.

20. It is not in dispute that the claimant union had recruited 63 employees in the respondent's employ as at the time this suit was filed. What is in dispute is whether the 63 employees constituted a simple majority of all unionsable employees at the time the union submitted a draft recognition agreement for signing by the employer.

21. The respondent made bare averments without attaching any documentary proof to the replying memorandum that it had 128 unionsable employees and therefore 63 employees did not constitute a simple majority.

22. The respondent did not call any witness to testify in support of this allegation.

23. The bare averments by the respondent do not suffice to rebut the cogent documentary evidence produced by the claimant union.

24. The court finds that the claimant union has proved on a balance of probability that it had recruited 63 employees of the respondent who at the time constituted a simple majority of all unionsable employees of the respondent.

25. Accordingly, the court makes the following final orders;

- a) the respondent to remit all union dues already deducted from all the 63 employees recruited by the union and continue deducting and remitting the same to the union on a monthly basis from the date of this judgment;
- b) the respondent to sign a recognition agreement with the union effective from the date of this judgment;
- c) the respondent to pay costs of the suit.

Dated and delivered at Nairobi this 23rd day of September, 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE