



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT At Nakuru**

**CAUSE NO. 83 OF 2014**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS &  
ALLIED WORKERS CLAIMANT**

**V**

**BOARD OF MANAGEMENT, ST. PETERS MARAKWET BOYS HIGH SCHOOL  
RESPONDENT**

**JUDGMENT**

1. This dispute relates to a recognition dispute and the refusal by the Respondent to commence deduction of monthly union subscriptions from its employees who have joined the Claimant Union.
2. The Union's case is that it recruited a simple majority of the unionisable non-teaching staff employed by the Respondent but the Respondent refused to commence deduction of union dues and or grant it recognition.
3. According to the Union, it reported a trade dispute to the Minister for Labour on 12 March 2013, but because the Respondent did not cooperate with the Conciliator, he returned a verdict of unresolved dispute.
4. The Respondent contended that the Union had not met the statutory threshold for grant of recognition and further denied that the Union had exhausted the statutory dispute resolution mechanisms.
5. The Respondent also asserted the term of the Board of Governors had expired in 2013 and a new Board was yet to be appointed.
6. The Respondent filed several letters said to be from employees signalling withdrawal from the Union.
7. On 15 December 2014 the parties entered a consent pursuant to which the Respondent paid to the Union Kshs 60,750/- on account of arrears of monthly union dues.
8. On 25 June 2015 the parties intimated to the Court that they would rely on the record and written submissions to be filed.
9. The Court did not accede to the method proposed by the parties because there appeared to be disputed facts which could not be resolved without calling oral testimony.
10. When the Cause was called out for hearing on 29 February 2016, the Union led testimony from its Organising Secretary, Eldoret.

11. The hearing was adjourned to enable the Respondent call a witness but no witness was availed and on 13 October 2016, the Court rejected another request for adjournment sought by the Respondent.

12. The Respondent was therefore forced to close its case and directions were given as to the filing of submissions. The Union filed its submissions on 24 October 2016 while the Respondent's submissions were not on file by this morning.

### ***Simple majority***

13. The Union's Organising Secretary testimony that it recruited 26 out of the Respondent's 34 unionisable employees and that a letter with the names was delivered to the Principal on 30 September 2013 was not controverted.

14. The testimony that the Principal directed the employees who had signed up to join the Union to withdraw was also not challenged.

15. It is instructive that all the withdrawal letters filed but not produced by the Respondent were dated 30 September 2015.

16. It is more probable that the Respondent's Principal coerced the employees to write the letters as stated by the Union's witness. Such a practice is not only a meddlesome interference with workers right to associate and participate in the activities of a trade union but also an interference with a union's organisational rights.

17. The Court has also noted that the parties entered into a consent on 15 December 2014 and such consent would not have been plausible if the employees had voluntarily withdrawn from the Union.

### **Right union**

18. The Respondent did not deny that the Union's constitution allow it to organise within the educational sector.

19. The Court finds that the Union had met the statutory threshold for grant of recognition.

### ***Deduction of Union dues***

20. The letter asking the Respondent to commence deducting union dues set out the appropriate Legal Notice No. 13572 of 28 September 2012.

21. Apart from the Ministerial order, by signing a check-off form an employee gives instructions to the employer to deduct from his/her wages and remit the same to the notified body.

22. Such intention by an employee is in consonance with the statutory right of an employee to dispose of his/her wages as desired.

### **Conclusion and Orders**

23. The Court finds and holds that the Union has satisfied the requisite test and orders the Respondent

- i. grant the Union recognition within 30 days from today
- ii. continue deducting and remitting union dues.

24. Because of the anticipated social partnership between the parties, each party to bear its own costs.

**Delivered, dated and signed in Nakuru on this 9<sup>th</sup> day of December 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Mr. Siembo, Industrial Relations Officer, KUDHEIHA

For Respondent Mr. Mbaka, Litigation Counsel, Office of the Attorney General

Court Assistant Nixon