



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 67 OF 2014

(Before Hon. Justice Maureen Onyango on 20th February, 2015)

KUDHEIHA WORKERS CLAIMANT

-VERSUS-

EBUSIRATSI SEC SCHOOL RESPONDENT

JUDGMENT

The claimant is a registered trade union whose area of operation covers educational institution employees. The claimant alleges in the Memorandum of Claim dated 19th March 2013 and filed on 13th May 2014 that it recruited 12 employees of the respondent, a Secondary School registered under the Education Act. That at the time material to this suit the respondent had 13 employees. That the 12 employees represented 98% recruitment which is way above 50+1% required for purposes of recognition under the Labour Relations Act.

By a letter dated 9th November 2009 the claimant wrote to the respondent seeking a joint meeting on 26th November 2009 for the purpose of signing a recognition agreement and to discuss deductions and remittance of union dues as well as arranging for workers shop-level elections. The respondent ignored the letter, thus frustrating the claimant's attempts to arrange the meeting.

The claimant further alleges in its Memorandum of Claim that the respondent thereafter embarked on interfering with the claimant's members right of association by intimidating and threatening them in an attempt to influence them to withdraw from membership of the claimant.

By letter dated 16th May 2011 the claimant invoked Section 62(1) of the Labour Relations Act and reported a dispute to the Minister for Labour on the following issues:-

1. Refusal by the respondent to sign recognition agreement.
2. Refusal by the respondent to deduct and remit union dues, and
3. Refusal by the respondent to allow members to elect their shop-level representative.

The claimant further submitted in the Memorandum of Claim that the Minister accepted the dispute and by a letter dated 26th July 2011 appointed a conciliator Mr. B. Musandu of Kakamega Labour Office as conciliator. By letter dated 10th October 2011 the conciliator convened a meeting on 19th October 2011 which the claimant attended but the respondent ignored. Upon the failure of the respondent to attend the meeting or send their Memorandum to the conciliator, the conciliator issued a certificate that the dispute was unresolved pursuant to Section 69 of the Labour Relations Act. The certificate was issued by

letter dated 25th October 2011.

Following the issuance of the certificate the claimant filed this dispute.

The respondent entered appearance through D. C. Chitwah & Co. Advocates and filed a Statement of Defence dated 5th June and filed on 6th June 2014.

In the Statement of Defence which barely covers one page the respondent denies that a conciliation meeting was ever organized or that the respondent was ever invited to the conciliation meeting. It is further averred in the defence that if there was a conciliation meeting the respondent was never invited to the same. The respondent further denied that the claimant recruited 12 of its non-teaching staff. The respondent also denied that this court has jurisdiction to entertain this dispute. The respondent prayed that the dispute be dismissed with costs.

The case was mentioned on 30th September when the claimant was represented but there was no appearances for the respondent. The case was fixed for hearing on 22nd January 2015 when again the claimant's representative Mr. Tonge Yoya attended court but there was no appearance for the respondent.

After confirming that the respondent was served and acknowledged service of both the mention notice dated 19th September 2014 and the hearing notice dated 12th November 2014 I allowed the claimant to proceed with the hearing in the absence of the respondent.

Mr. Yoya largely reiterated the contents of the Memorandum of Claim and the submissions therein. He urged the court to grant prayers as prayed in the Memorandum of Claim as follows:-

1. **That the respondent be ordered to deduct and remain in deducting and remitting union dues to the claimant.**
2. **That the respondent be ordered to enter into recognition agreement with the claimant and commence negotiations of collective bargaining agreement immediately within 60 days to safeguard the right of claimants members.**
3. **That court to order any award they deem just and fit.**
4. **That the cost of this application borne by the respondent.**

I have considered the Memorandum of Claim and annexures thereto and the contents of the Statement of Defence.

The claimant attached to the Memorandum of Claim a check - off form with names and signatures of 9 employees dated 31st May 2013. There is also a letter dated 29th April 2013 forwarding the names of the 9 employees to the principal of the respondent seeking the deduction of union dues.

The respondent neither denied that the persons named in the check - off form were their employees nor that the said employees constituted more than a simple majority to entitle the claimant to be afforded recognition.

Section 49 authorizes deduction of union dues from employees who have signed check - off forms while Section 54 of Labour Relations Act provides for recognition of a trade union which has recruited a simple majority of employees and for negotiation of collective bargaining agreement after signing of recognition agreement. The Section provides as follows:-

S. 54 (1)An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

(2) ---

(3)An employer, a group of employers or an employer's organization referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organization recognizes a trade union.

(4) ---

(5) ---

(6) --

(7)If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.

(8)When determining a dispute under this section, the Industrial court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister."

I am satisfied that the claimant union has proved that it recruited 9 employees who signed the check - off forms. I am also satisfied that the 9 names represent more than a simple majority of the respondent's unionisable employees.

For the foregoing reasons I order as follows:-

- 1. The respondent is hereby ordered to deduct union dues from employees who have signed the check - off forms and are in their employment as specified in the check - off form dated 31st May 2013 and remit to the union account specified therein from the salaries of March 2015 and to continue doing so at the end of every month.**
- 2. The respondent is directed to sign recognition agreement with the claimant within 30 days from the date of this judgment.**
- 3. The respondent is directed to commence negotiation for a collective bargaining agreement with the respondent within 60 days from the date of this judgment.**
- 4. Each party shall bear its cost.**

Orders accordingly.

MAUREEN ONYANGO

JUDGE

20/2/2015

Appearances:-

Tonge Yoya for claimant present

N/A for respondents

CC. Wamache