



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

JUDGMENT

1. The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers Union (the Union) sued Upper Hill Mixed Secondary School on 28 March 2012, and the issue in dispute was stated as *refusal by the Board to sign Recognition Agreement*.
2. The Respondent filed a Notice of Appointment through the Federation of Kenya Employers on 16 May 2012. A Response though, was filed by the firm of Mirugi Kariuki & Co. Advocates on 30 August 2013.
3. On or around 28 December 2012, the Respondent declared certain employees who were members of the Union redundant. The Union moved to Court under certificate of urgency on 24 January 2013.
4. On 8 March 2013, Ongaya J stayed the redundancies and further ordered that the affected employees continue serving until further directions from the Court.
5. The Court further directed that the main Cause be heard on 20 March 2013. On this day, the parties informed the Court that they were attempting an out of Court settlement.
6. The parties thereafter reached consent (filed on 10 April 2013) on the redundancy and consent to that effect was recorded on 11 April 2013. The parties were given more time to negotiate on the question of recognition.
7. On 4 October 2013, Ongaya J directed that the hearing of the Union's case proceed on the basis of the record while the Respondent was to call 1 witness.
8. On 28 May 2014, Ongaya J ordered that the Union's case be deemed closed because it had opted not to call any witnesses and that the Respondent's case be taken on 3 July 2014. The hearing did not come to pass.
9. On 9 October 2014, in the presence of Mr. Onwonga, Industrial Relations Officer for the Union, and Mr. Karanja for the Respondent, the Court fixed the Cause for hearing on 3 March 2015.
10. When the Cause was called up for hearing on 3 March 2015, only the Union was represented. The Respondent and its counsel were not present and the Court directed that it would deliver judgment

- on 8 May 2015.
11. The dispute herein was taken through conciliation by Mrs. C. O. Otieno, District Labour Officer. The Conciliator heard submissions from both the Union and the Respondent.
 12. The Conciliator in her report dated 27 September 2011, found as a fact that the Union had recruited 10 out of the 13 unionisable employees of the Respondent and that the Union had sent to the Respondent check-off forms (Form S).
 13. The Conciliator upheld the Union's case that it had met the threshold for recognition and recommended that it be granted recognition by the Respondent but also issued a Certificate of Unresolved Dispute because the Respondent had refused to commit to grant the Union recognition.
 14. The Court has noted the findings and recommendations by the Conciliator and also Legal Notice No. 263 of 1993, The Education (Board of Governors)(Amendment) Order, 1993, in which the Minister for Education granted Board of Governors of public schools the legal authority to enter into recognition agreements with competent trade unions.
 15. The Court was not informed whether the Legal Notice has been amended or revoked.
 16. The Court would therefore adopt the findings and recommendations of the Conciliator and enter judgment for the Union, and order the Respondent to grant the Union recognition within 30 days from today.
 17. It is unfortunate that this dispute has been pending since 2012 while the law is clear that disputes on recognition agreements should be filed under urgency, hence should be determined expeditiously.
 18. The record shows that most of the adjournments were caused by the Respondent. This is also regrettable.
 19. The Court directs the Respondent to pay the Union costs of Kshs 15,000/-.

Delivered, dated and signed in Nakuru on this 8th day of May 2015.

Radido Stephen

Judge

Appearances

For Union Mr. Onwonga, Industrial Relations Officer, KUDHEIHA

For Respondent Mirugi Kariuki & Co. Advocates

Nixon Court Assistant