



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**  
**(BIMA TOWERS)**  
**CAUSE NO. 122 OF 2012**  
**(Originally Nairobi Cause No. 1133 of 2012)**

**KUDHEIHA**

**CLAIMANT**

**v**

**BOARD OF GOVERNORS, MATUGA GIRLS HIGH SCHOOL**

**RESPONDENT**

**JUDGMENT**

1. Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (Union) lodged a Memorandum of Claim in Nairobi against the Board of Governors, Matuga Girls High School (Respondent) on 3 June 2012 and the issue in dispute was stated as refusal by the Board of Governors to:-
  - (a) deduct and remit union dues,
  - (b) recognise the union and
  - (c) negotiate a collective Bargaining Agreement.
2. On 27 February 2013 the Attorney General filed a Notice of Appointment on behalf of the Respondent but did not file any Response. During an appearance in Court on 27 February 2013, Mr. Eredi, Principal Litigation Counsel informed the Court that the Respondent was not disputing item 1 in the Memorandum of Claim ( deduction and remitting of union dues) but sought for two months to negotiate on the dispute regarding recognition agreement and Collective Bargaining Agreement.
3. The Court granted an adjournment with a directive to the Respondent to file a Response and to attempt out of Court negotiations. The Response was not filed and the negotiations did not succeed.
4. Hearing was fixed for 28 August 2013, and on that day Mr. Thuita for the Union informed the Court that he had received a letter dated 7 August 2013 in which the Respondent had agreed to deduct and remit union dues beginning August 2013 and that a meeting would be called with the Union to discuss other issues.
5. On 27 September 2013 the Union confirmed that the Respondent had indeed commenced

- deduction and remitting to it union dues.
6. Eventually the Cause proceeded to hearing through submissions on 17 December 2013. The Union submitted while the Respondent informed the Court that it left the matter to the Court.
  7. The Union submitted that it had recruited more than a simple majority of the Respondent's unionisable employees in September 2010 (23 out of 25 employees) and that it submitted form S as required to the Respondent.
  8. The Respondent, it appears declined to grant the Union recognition and a trade dispute was reported to the Minister for Labour. The Conciliator appointed by the Minister released his report and recommendations on 7 October 2011.
  9. The Conciliator in his findings stated that the Union had recruited 23 out of 25 non teaching staff of the Respondent translating to 92% and recommended that the Respondent commence deducting and remitting of union dues with effect from October 2011 and to grant the Union recognition by 30 November 2011.

### **Deduction and remitting of union dues**

10. The Union confirmed and this is reflected in the letter dated 7 August 2013 from the Respondent that it had commenced deducting and remitting union dues. This issue therefore has been overtaken by events.

### **Recognition Agreement**

11. Section 54 of the Labour Relations Act provides for recognition of trade unions by employers. The Union annexed to the Memorandum of Claim a list of 23 names in form S. The report by the Conciliator also established and found that the Union had recruited 23 employees which form 92% of the unionisable employees.
12. The Respondent did not deny that the Union had recruited more than a simple majority or that the Union was the right union. The Respondent also did not argue or establish that there is a rival union.
13. The Court is therefore satisfied that the Union has established that it merits to be granted recognition by the Respondent.

### **Collective Bargaining Agreement**

14. This particular prayer is premature. The terms of a Collective Bargaining Agreement are arrived at after grant of recognition and have its own momentum and dynamics. It would be premature to discuss this prayer.

### **Conclusion and Orders**

15. In conclusion, the Court finds that the issue relating to deduction and remitting of union dues has been overtaken by events while the prayer for negotiation of a Collective Bargaining Agreement is premature.
16. The Union has established that it has met the threshold for grant of recognition and the Respondent is hereby ordered to grant it recognition within the next 21 days.
17. There is no order as to costs.

**Delivered, dated and signed in open Court in Mombasa on this 28th day of March 2014.**

**Radido Stephen**

**Judge**

**Appearances**

Mr. Thuita, Industrial Relations Officer

KUDHEIHA

for Union

Ms. Kiti, State Counsel

for Respondent