



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 360 OF 2013**

**KENYA UNION OF DOMESTIC,**

**HOTELS, EDUCATIONAL INSTITUTIONS,**

**HOSPITALS & ALLIED WORKERS**

**CLAIMANT**

**v**

**BOARD OF GOVERNORS,**

**MARMANET SECONDARY SCHOOL**

**RESPONDENT**

**JUDGMENT**

1. The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (Union) instituted legal proceedings against the Board of Governors, Marmanet Secondary School (Respondent) on 22 October 2013 stating the issue in dispute as *refusal to sign recognition agreement*.

2. The Respondent filed a Memorandum of Response on 6 November 2013 and on 14 November 2014, the Union and Respondent agreed that the Cause should be determined on the basis of the record and submissions.

3. The Union filed its submissions on 19 November 2014. The Respondent had until 5 December 2014 to file its submissions. By today morning, those submissions were not in the file.

4. The issue for determination is simple. It is whether the Union has met the statutory threshold for recognition as representative of the Respondent's unionisable employees.

5. The Union's case is that on 30 September 2009, it recruited 13 of the Respondent's unionisable employees, and that on or around 26 October 2009 it forwarded to the Respondent Form S detailing the names of the employees who had signed up for union membership.

6. The Respondent, however, refused to grant it recognition and it thus reported a trade dispute to the Minister for Labour who appointed a Conciliator.

7. The Respondent declined to attend several meetings called by the Conciliator and therefore on 20 August 2013, the Conciliator declared the dispute unresolved.

8. The Union submits that it had attained more than 51% membership of the Respondent's unionisable employees, that there is no rival union and that it has met the threshold set out in section 54

of the Labour Relations Act.

9. The Union further submits that the Minister for Education had through Gazette Notice No. 263 of 1994 mandated Board of Governors of schools to enter into recognition agreements with competent unions.

10. The Respondent apart from denying the contentions by the Union and putting it to strict proof advanced a defence that a properly constituted Board was not in place, and therefore it could not grant the Union recognition.

11. One of the mandatory requirements for a Union to be granted recognition is that the Union must be representative of a simple majority of an employer's unionisable employees.

12. The Union pleaded that it had recruited 13 of the Respondent's unionisable employees. However, the pleadings did not disclose the total number of Respondent's unionisable employees.

13. It is only in written submissions that the Union discloses that the Respondent had a total of 13 unionisable employees. The Union was introducing a matter of evidence through submissions.

14. This is not a practice known in procedural or substantive law in Kenya. At least I am not aware of any statutory provision which permits introduction of evidence through submissions. I have equally not come across any case law where this practice has been given legal *imprimatur*.

15. As it is, the Union has failed to satisfy, at least on the record, that it had attained more than simple majority representation as required by section 54 of the Labour Relations Act.

16. The Claim must therefore fail. The Union can commence fresh organisation and after meeting the statutory threshold seek recognition from the Respondent.

17. In the event, the Court dismisses the Memorandum of Claim filed in Court on 22 October 2013 with no order as to costs.

**Delivered, dated and signed in Nakuru on this 11<sup>th</sup> day of December 2014.**

**Radido Stephen**

**Judge**

**Appearances**

For Union                    Mr. Onwong'a, Industrial Relations Officer, KUDHEIHA

For Respondent            Mr. Mburu, instructed by Rodi Orege & Co. Advocates