



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 2 of 2013**

**KUDHEIHA WORKERS.....CLAIMANT**

**VS**

**EREGI TEACHERS COLLEGE .....RESPONDENT**

**JUDGEMENT**

The issue in dispute in this cause is refusal by the Respondent to negotiate a CBA with the Claimants herein. The Claimants filed their memorandum of claim on the 14th of August 2012 through their Secretary General . The Respondents were served with the said memorandum of claim on the 3rd of September 2012 and have neither entered any appearance nor filed their Reply to the Claim to date. The Respondents were also served with a mention notice for purposes of taking directions and were expected to appear in court on the 1st of October 2012 . The Respondents also failed to appear in court on this day. The court at this point gave directions that the matter proceeds for hearing and a hearing date for 6th November 2012 was taken by the claimants. The Respondents were also served and they also failed to attend court. The court thus ordered that hearing proceeds on the 22nd of January 2012 and on this day hearing proceeded ex parte in the absence of the Respondents.

The Claimants case is that they represent employees in education institutions and the Respondent being one such institution, the claimants went ahead and recruited all unionisable employees of the Respondent college. The parties went ahead and signed a recognition agreement annexed herein as appendix 1. This recognition agreement is dated and signed on the 22nd day of October 2010 at Eregi Teachers Training College. After signing the recognition agreement, the Claimants requested the respondent to enter negotiations with them with a view of negotiating and registering a CBA. This, the claimants did by sending proposals to the respondents on 10th January 2011 and requesting for counter proposals so that negotiations could begin by end of January 2011. The Claimants contend that the Respondents failed to respond to their proposal. Thereafter, the claimants contend that they tried severally to write to the respondents again and even sought an appointment with the respondents Principal in order to have a meeting to resolve the matter, but there was no response forthcoming. The Claimants decided to report a dispute to the Ministry of Labour on the 6th of June 2011 as per appendix 4.

It is further the Claimant's case that the Ministry responded by appointing a conciliator a Mr Musandu of Kakamega Labour to try and resolve the dispute. On The 29th of July 2011, the Claimant sent their memorandum of issues to be considered in the proposed CBA, a joint meeting was expected to be held between the parties and the Conciliator on the 2nd of August 2012 as per appendix 7. This meeting never materialised as the Respondent failed to attend. A certificate of disagreement was thereafter issued by the Conciliator prompting the Claimants to file this suit before court.

As already indicated, the Respondents failed to file their pleadings as expected prompting this court to

proceed and dispose of this matter exparte. Having heard the Claimant, the issues for determination are as follows;-

1. Whether the Claimants have fulfilled their obligations to warrant their demand to enter into collective bargaining with the Respondents
2. If so what remedy the Claimants are entitled to

In answer to one above , let me start by examining the requisite provisions of law in relation to collective bargaining. Art 41(5) of the Constitution of Kenya explicitly provides as follows.-

***‘Every trade union, employers’ organisation and employer has a right to collective bargaining’***

Kenya has also ratified ILO Convention 98 which provides a right to organise and collectively bargain. This right is therefore part and parcel, of our laws and is given to both the employer and the employees who are members of a trade union. Recognising this right, the Claimant herein started with recruiting the eligible members from the Respondent’s employees. Thereafter, the Claimant and the Respondent entered into a recognition agreement as provided for under section 54(1) of the Labour Relations Act 2007. The said section provides as follows

***“An employer, including an employer in the public sector, shall recognise, a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees”***

Part of the agreement signed between the union and the Respondent provide in part as follows

***“ ... the ‘Board’ and the ‘Union’ hereby make this agreement with respect to recognition of the Union as aforesaid and to negotiate procedures to be followed in dealing with claims and grievances put forward by the Union in virtue of such recognition which shall enter into force on the date of this agreement and shall provide as follows...”***

The Respondents had actually agreed to enter negotiations with the Claimants in this agreement. It was expected that this would follow automatically as provided for in law. Section 57(1) of the Labour Relations Act provides as follows;-

***“An employer, group of employers or an employers’ organisation that has recognised a trade union in accordance with the provisions of this part shall conclude a collective agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement”***

The Claimant has actually fulfilled its part of the bargain by recruiting the requisite numbers and so gaining recognition from the Respondents. Refusal by the Respondents to commence negotiations which can lead to signing of a CBA with the Claimants is therefore in breach of the law.

What remedy is the Claimant then entitled to? The only remedy which is available to the Claimants and which I order is that the Respondents must negotiate with the Claimants without any further delay. Such negotiations must commence and be completed within three months from the date of this ruling and aided by the Labour office Kakamega. The Claimants are at liberty to move this court for any other orders in case of breach. The Respondents are also condemned to pay costs of this case.

**Read, signed and delivered at Kisumu this 28th day of January 2013**

in the presence of:

.....for claimant.

.....for respondent.

**HELLEN WASILWA**  
**JUDGE**