



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 149 of 2010

KENYA UNION OF DOMESTIC, HOTELS EDUCATIONAL

INSTITUTIONAL, HOSPITALS AND ALLIED WORKERS CLAIMANT

-VERSUS-

**COMMISSION FOR HIGHER EDUCATION
RESPONDENT**

ISSUE IN DISPUTE

“Refusal by the Management to sign Recognition Agreement after the Union had attained the required simple majority into membership.”

AWARD

The dispute herein was reported by the Claimant to the Minister for Labour by letter dated 17th November 2009. By letter dated 8th December 2008, the Minister accepted the dispute and appointed a conciliator to endeavor to effect settlement by conciliation. Before the parties were called for conciliation meeting the Respondent wrote to the Chief Industrial Relations Officer to inform him that the Respondent is a regulatory body and not an educational institution and therefore cannot sign a recognition agreement with the Claimant. The Claimant then filed the disputed in this Court for adjudication.

In the Memorandum of claim filed in Court on 23rd February 2010 the Claimant submits that it is a legally registered trade union with mandate to represent interests of employees working in educational institutions and allied establishments as provided in rule 3 of its constitution, that between January and September 2008 it enrolled into its membership 32 out of 47 unionisable employees of the Respondent through check off system, that this constituted a simple majority. The union attached the check off forms with lists of recruited employees as Appendix 2 to its Memorandum of Claim.

The union further submitted that on 12th March 2008 and 1st August 2008 respectively it dispatched the check off forms to the Respondent for deduction of union dues and remittance into the Claimant’s account, that the Respondent complied, made the deduction and remitted into the account of this union without any problem. That on 3rd July 2008 the Claimant dispatched a recognition agreement to the

Respondent and proposed a joint meeting on 17th July 2008 for the purpose of signing the agreement but when they went for the meeting were informed by the Respondent that the agreement had been handed over to the Respondent's legal officer for scrutiny and advise before signing by the parties. The Respondent promised to communicate with the union on the same within a week. The Respondent did not communicate and the union sent reminders on 25th August and 22nd September 2008. On 28th November 2008 the respondent wrote to inform the Claimant that it had examined the provisions of the union constitution and in their opinion the respondent is not covered by the constitution as it is not an educational or training institution.

The Claimant submitted that it is the only registered union with mandate to negotiate wage terms and conditions of service of employees of the Respondent and denying them recognition would deny the workers the right to join trade unions, organize and collectively bargain for better terms and conditions of service as provided in the constitution, the Labour Relations Act and ILO Conventions 87 and 98.

The Respondent in both their Reply to the Memorandum and in their oral submissions in Court state that the union's constitution does not cover their employees, that the commission is a regulatory and quality agency in education and higher learning in the universities. They referred to the Employment Act, Labour Relations Act, ILO Convention No.98, the Respondent's Service Charter and Strategic Plan for 2005-2010.

The issue for determination is whether the Claimant is the right union to represent employees of the Respondent and if the union qualified for recognition at the time when they asked the Respondent for recognition.

Both the repealed Constitution and the current Constitution give workers a right to freedom of association, right to form, join and participate in activities of trade unions. The constitution of the Claimant union at Rule No.3 on membership provides as follows:-

(a) Membership of the union shall be open to all employees engaged in private houses or homes, flats, apartments, clubs, guest houses, bakeries, sweets and biscuit making factories, hotels, restaurants, casinos, catering and similar establishments providing lodging, food beverages or both and further categories of related establishments providing tourism Services, Educational Institutions including schools, polytechnics, training centres, universities and university colleges, mass media institutions, radios, televisions and recording studios, social services including children and old-age homes, all service non-governmental organizations and projects associated with them, private hospitals including nursing training centres, nursing homes, clinics including dispensaries, religious institutions including Christian churches puglim, mosques, hindus, temples and all other institutions and projects associated with them provided that, such employees are of the apparent age of sixteen years.

The Respondents in their own words are "a regulatory and quality control agency, who regulates quality of education of higher learning in universities. In my opinion they fall under "other institutions and projects associated with educational institutions, training centres, universities and university colleges. For this reason their employees are covered by the constitution of the Claimant and are eligible to join membership of the Claimant. The refusal to sign the recognition agreement on the basis of eligibility is therefore in my opinion not a proper reason for failure to sign a recognition agreement.

(b) Every eligible person shall be required to pay an entrance fee of Kshs.50/= on application for membership and thereafter on being accepted a monthly subscription of the sum equal to 2 percent (2%) in respect of Trade Union dues from the wages of the employee's earning total gross pay per month subject to a minimum of Kshs.30/= from the wages of each employee earning total gross pay per month. The subscriptions are payable on the first day of every month, or in advance for a maximum period of twelve months. In addition to monthly dues, every member shall pay a monthly subscription of Shs.5/= being application fee to Central Organization of trade Unions (COTU) (KENYA).

(c) Union admission to membership the member shall be bound by this constitution, by-laws,

resolutions and decisions of the conference of delegates and the National Executive Board.

(d) Under no circumstances shall any entrance fee/subscriptions or other donations paid to the Union be refunded.

(e) Any member desiring to resign/withdraw from membership of the Union may do so by giving one calendar month's written notice of such resignation/withdrawal and by paying all his dues and levies up-to the end of his notice of resignation withdrawal and surrendering his membership to the Branch Secretary of his branch.

If he is on check off he will give another calendar month's notice to his employer copy to the Secretary General and to the Branch Secretary notifying in writing that he will not be a member of the Union at the end of the expiry, of such notice and therefore no deduction will be mad following the next month.

(f) A member who has resigned/withdrawn his membership or otherwise and ceased to i.e. a member of his branch may be registered to membership as follows:-

(i) If the application for re-admission is made within six months of his resignation/withdrawal the member shall be required to pay all arrears and levies from the date of his resignation/withdrawal and shall thereupon be reinstated to his previous standing in membership.

(ii) After six months of resignation/withdrawal, the member shall be admitted as a new member and required to pay all arrears and levies for six months.

The requirements for recognition are the following:-

First, the constitution of the union must cover the section in which the employer operates, secondly, the union must recount a simple majority of eligible employees and thirdly, there should be no other union claiming to represent the employees, in other words, there should be no rival union.

In the present case, I have already found that the union's constitution covers the employees of the Respondent. The Claimant therefore qualifies under the first criteria.

The Claimant submitted that they have recruited 32 out of 47 eligible unionisable employees of the respondent. This constitutes more than 68% of eligible employees and is therefore above a simple majority of the unionisable employees. The Claimant attached the lists of all the employees who have signed the check off forms and confirmed that indeed the Respondent has faithfully been deducting the union of the employees who signed the check off forms and remitting the same to the Claimant's gazette account. The Respondent did not dispute this fact.

I therefore find that the Claimant also meets the second criteria for recognition.

The third criteria is that there is no rival union claiming to represent the Respondents employees. The Claimant has submitted that there is no such union. Again the Respondent has not disputed this fact.

For the foregoing reasons I find that the Claimant has met all the requirements for recognition in accordance with Section 54 of the Labour Relations Act and is therefore entitled to be recognized by the Respondent.

I hereby order the Respondent to sign a recognition agreement with the Claimant within 30 days from the date of this award.

Orders accordingly.

Read in open Court and signed on this 8th day of May 2013.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

No appearance

In the presence of:- _____ for Claimant

No appearance

_____ for Respondent