



REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 171 OF 2008

**KENYA UNION OF EMPLOYEES OF VOLUNTARY & CHARITABLE ORGANISATIONS
.....CLAIMANT**

-VERSUS-

TAILORS & TEXTILES WORKERS UNION.....RESPONDENT

Mr. Janitor Otieno for Claimant.

Mrs. J.A. Guserwa for Respondent.

RULING

The matter for determination before court is the Amended Statement of claim dated 29th May, 2012 and filed on 30th May, 2012. The Claimant is the **Kenya Union of Employers of Voluntary and Charitable Organisations (KUEVACO)** whereas the Respondent is **Tailors and Textiles Workers Union**.

The issue in dispute is “*Termination of service of Mr. Cosmas Okong’o Orowe*” by the Respondent union.

The counsel for the Respondent Mrs. J.A. Guserwa has at the outset raised a preliminary objection to the suit in response to Amended Statement of Claim. The statement of response is dated 14th June, 2013 and was filed on 28th October, 2013.

The preliminary objection contained in paragraph 2 thereof is as follows:

“The Claimants having no Recognition Agreement with the Respondents have no right to sue on behalf of one Mr. Cosmas Okongo Orowe and as such the Respondents shall raise a preliminary objection at the hearing hereof to that effect.”

In paragraph 1 of the Amended Statement of Claim, the Claimant alleges that it has a Recognition Agreement with the Claimant executed on 25th July, 2002. The Recognition Agreement is annexed to the Amended Statement of Claim and marked ‘A’.

The Respondent asserts no Recognition Agreement was annexed to the Amended Statement of Claim served on them by the Claimant. If this was the case, it must be an omission on the part of the Claimant as clearly the Recognition Agreement is annexed thereto.

The court has no reason to doubt the validity of the Recognition Agreement signed on behalf of the

parties by the Secretary Generals of the Claimant and that of the Respondent as at the time of execution on 25th July, 2002. This submission by the Respondent is therefore unfounded and the same is dismissed.

In her submission on the preliminary objection Mrs. Guserwa told the court that even if there was a recognition agreement between the parties, no evidence has been placed before court to show that the grievant is a member of the Claimant union and therefore, the Claimant union lacks *locus standi* in *judicio* to represent the grievant.

The court notes that this being a legal point need not be specifically pleaded in the Statement of Response and therefore the court went ahead to consider it though it is not raised specifically in the Amended Statement of Response.

However, the court notes that the preliminary objection is not a pure point of law in that, had it been specifically pleaded by the Respondent, the claimant would have tendered evidence to show that the grievant was its registered member and paid union dues directly to the Claimant.

This opportunity was denied the Claimant as the matter was raised from the bar.

Mr. Janitor Otieno, the representative for the Claimant union submitted strongly that the grievant was its member for a long time and paid union dues directly to the Claimant. That indeed he was not only a member, but also was a negotiator for the Claimant union.

In the Industrial Court of Kenya **Cause No. 2040 and 1703 of 2013 Kenya Union of Domestic, Hotels, Education Institutions, Hospitals & Allied Workers vs. Guii Mwalimu Sacco Hotel Ltd**, the court found that *locus standi* by a union to represent an employee is founded on membership. In this regard, the union has capacity to represent an employee who is registered as its member in court regardless of whether the employer of the particular employee has a recognition agreement with the union.

The court notes that the fact of membership needs to be specifically pleaded in the statement of claim because it gives a union the right of representation in an area that would otherwise be a preserve for advocates of the High Court.

Had the objection been properly pleaded in the Statement of Response the Claimant would have had opportunity to address it in its reply to the Statement of Response.

For that reason, rather than dismiss the claim for failure to plead the fact of membership of the grievant, the court would instead grant leave to the Claimant to file a reply specifically addressing this matter of membership to allow the court to proceed to hear the claim on its merits. The response to be filed within fourteen (14) days from the date of this Ruling.

It is so ordered.

Dated and delivered at Nairobi this 13th day of August, 2013.

MATHEWS N. NDUMA

PRINCIPAL JUDGE