



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA

CAUSE NO. 178 OF 2012

(Originally Nairobi Cause No. 1136 of 2012)

KENYA UNION OF DOMESTIC, HOTELS,

EDUCATIONAL INSTITUTIONS, HOSPITALS

& ALLIED WORKERS..... CLAIMANT

v

BOARD OF GOVERNORS,

KWALE BOYS HIGH SCHOOL RESPONDENT

JUDGMENT

1. The Kenya Union of Domestic, Hotels, Education Institutions, Hospitals & Allied Workers (KUDHEIHA) filed a Memorandum of Claim against the Board of Governors, Kwale Boys High School (the Respondent) on 3 July 2012 and the issues in dispute were 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. The Respondent filed a Memorandum of Response on 15 October 2012 and I heard the parties on 8 July 2013 after attempts to settle the matter through conciliation failed. The parties relied on the pleadings, documents filed and submissions.

KUDHEIHA's pleadings and case

3. KUDHEIHA is a registered trade union and it pleaded that it recruited 29 out of the unionisable employees of the Respondent in May 2010. On 22 May 2010 it forwarded check off forms to the Respondent to deduct and remit union dues and also to facilitate the signing of a recognition agreement.
4. According to KUDHEIHA, the 29 employees meant it had recruited 100% of the unionisable employees of the Respondent but the Respondent refused to effect and remit union dues and or sign a recognition agreement.
5. On 14 April 2012 KUDHEIHA reported a trade dispute to the Minister for Labour who in turn appointed a conciliator on 28 July 2011. The Conciliator issued a report on 7 October 2011 and in his findings stated that KUDHEIHA had recruited 100% of the Respondent's unionisable

- employees and therefore he recommended that the Respondent commence deduction and remission of union dues and also to sign a recognition agreement with KUDHEIHA.
6. The Respondent refused to accept the recommendations of the Conciliator hence KUDHEIHA commenced these legal proceedings seeking that the Respondent be ordered to deduct and remit to it union dues and to sign with it a recognition agreement.

Respondent's pleadings and case

7. The Respondent admitted in its pleadings that KUDHEIHA had recruited 29 of its unionisable employees but denied that KUDHEIHA had served it with check-off forms or that the 29 employees were equivalent to 100% of its unionisable employees. The Respondent further denied having received a copy of recognition agreement for execution.
8. The conciliation process and report was not admitted.
9. Regarding deduction and remission of union dues, the Respondent contended that it had limited resources and therefore could not enter into a recognition agreement. Entering into an agreement would result in extra charges/levies to the parents.

The Law

10. Articles 36 and 41 of the Constitution enshrines the right to freedom of association and of every worker to form, join and participate in the activities and programmes of a trade union respectively.
11. Section 4 of the Labour Relations Act crystallizes the constitutional rights expressed in Articles 36 and 41 of the Constitution.
12. Section 54 of the Labour Relations Act on the other hand sets the parameters within which a worker can enjoy the rights set out in Articles 36 and 41 of the Constitution. Under this section a trade union is entitled to recognition by an employer if it represents a simple majority of an employer's unionisable employees.
13. The section also provides for the signing of a recognition agreement as a culmination of the acceptance that a union represents more than a simple majority of an employer's unionisable employees.
14. Section 48 of the Labour Relations Act has set out the conditions to be fulfilled before an employer starts deducting and remitting union dues to a union. This should occur thirty days after an employer is furnished with Form S. Form S is ordinarily referred to as check-off form.

Evaluation

15. The Respondent in paragraph 3 of the Response admitted that KUDHEIHA had recruited 29 of its unionisable employees. It denied that these comprised more than a simple majority of its unionisable employees. But nowhere in the pleadings has it stated the total number of its unionisable employees.
16. Although the Respondent denied it was sent the check-off forms, in my view the denial is hollow and there is no way it could have had the details and particulars of the 29 unionisable employees who had joined KUDHEIHA to make the admission in paragraph 3 of the Response.
17. The Minister for Labour appointed a Conciliator. The Minister for Labour/Conciliator wrote to the parties on 28 July 2011, 11 August 2011, 26 August 2011 and the report dated 7 October 2011 indicated that the Respondent made submissions. The Respondent therefore was being economical with information by pleading that it was not aware of the conciliation process.
18. The Conciliator's report found as a fact that the 29 employees comprised 100% of the Respondent's unionisable employees. The Respondent further averred that it was a stranger to the plea that KUDHEIHA was the only union representing the non-teaching staff employed by the Respondent. But it failed to state which other union it was engaged with if any at all.
19. The Constitution recognises workers right to form, join and participate in the activities and programmes of a trade union and to engage in collective bargaining. Recognition is just one of the steps which actualizes the workers' rights as enshrined in Articles 36 and 41 of the Constitution.
20. I am therefore satisfied that KUDHEIHA has demonstrated that it has complied with the statutory requirements entitling it to be granted recognition by the Respondent. And further that the

Respondent is under a statutory obligation to deduct and remit to it union dues in respect of those employees who signified their membership of KUDHEIHA by signing Form S (check off forms).

Conclusion and Orders

21. I therefore do order the Respondent to start deducting and remitting union dues to KUDHEIHA through such account as may have been designated by the Minister for Labour and that the Respondent grants KUDHEIHA recognition by signing a recognition agreement within the next 30 days.
22. There will be no order as to costs because of the anticipated on-going relationship between the parties as social partners.

Delivered, dated and signed in Mombasa on this 23rd day of August 2013.

Justice Radido Stephen

Judge

Appearances

Mr. Alex Thuita (Union official) for KUDHEIHA

Ms. Kiti instructed by the Attorney General or Respondent