



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 989 of 2010

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS, HOSPITALS AND ALLIED WORKERS CLAIMANT

VERSUS

RIFT VALLEY TECHNICAL TRAINING INSTITUTE.....RESPONDENT

JUDGMENT

The Claimant is the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers. The Respondent is Rift Valley Technical Training Institute. The memorandum of claim was filed on 3rd September, 2010. The memorandum of Reply and submission was filed on 7th October, 2010 through Gumbo and Associates. The Dispute in issue is refusal by the Respondent to recognize the Claimant Union.

Section 54 (1) of the Labour Relations Act, 2007 applies to this case. The Section provides that an employer, including an employer in the public sector shall recognize a Trade Union for purposes of Collective Bargaining if that trade union represents the simple majority of unionisable employees.

The Claimant has submitted that it is the Union that should represent the employees of the Respondent and in 2002 it recruited 36 employees out of the 58 employees of the Respondent. However after the recruitment the Respondent's management completely refused to grant the Union recognition or to deduct Union dues. On 3rd March, 2003, the Union reported a dispute to the Minister for Labour but the Minister did not act. That between 2003 and 2005 most of the employees the Union had recruited and had signed the check-off had been dismissed to reduce the Union number and to deny the Union recognition. The Union mounted a recruitment drive again and this time round recruited 37 employees out of 58 unionisable staff of the Respondent as per annex 4 on the memorandum of claim. The union presented a recognition agreement and the management refused to sign. A dispute was reported to the Minister and a conciliator was appointed. The Respondent refused to co-operate and a certificate of disagreement was issued.

The Respondent relies on a schedule of its staff signatures undertaking that they are not ready to be members of the Union. It is annex III on the memorandum of reply and its staff letter to the Secretary of the Claimant union has a schedule of 49 names of staff duly signed.

The letter by the staff to the Union reads as follow:

“17th/09/2010

The Branch Secretary

Kudheiha Union

Eldoret Branch

ELDORET

Dear Sir,

SUBJECT: KUDHEIHA MEMBERSHIP

We the non-teaching staff of Rift Valley Technical Training Institute whose names are attached herewith; do confirm that-

- (i) We have individually opted not to be members of the Union for the time being as we have an effective in house ways of dealing with our issues.***
- (ii) That we shall advise the representatives of the Union when we shall be ready and willing to join the Union.***
- (iii) That our decision not to join the Union is made of our own individual free will without any influence from any quarter.***
- (iv) That we have each appended our respective signatures to be bound by the contents of this letter. See attached schedule for signatures.***
- (v) That our letter dated 18th September 209 signed on our behalf by Mr. Joseph Kemboi emanated from a consultative meeting held by us the non-teaching staff of Rift Valley Technical Training on this date of 17th September, 2009”.***

The court has considered the material on record and makes the following findings:

- (a) That on two occasions the Union has met the statutory threshold for recognition by recruiting at least 50% of the Respondent’s unionisable staff and the court finds that the Claimant on the two occasions was entitled to recognition by the respondent.**
- (b) The letter dated 17th September 2010 is not evidence of the respondent’s staff unwillingness to be members of the Union but that they would be willing and ready to be members at a future date and which in the opinion of the court, they are keen to benefit from being members of the Claimant union.**

In conclusion, judgment is entered for the Claimant against the Respondent for-

- (a) the Respondent’s management to recognize the Claimant Union and to conclude the relevant recognition agreement;**
- (b) the recognition agreement to be concluded by 1st January, 2013; and**
- (c) the respondent to pay costs of this cause.**

Signed, dated and delivered in court at Nairobi this 9th November, 2012.

**BYRAM ONGAYA
JUDGE**