



**Kenya National Union of Service Employees v One Facility Management
(Cause E293 of 2022) [2023] KEELRC 1015 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1015 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E293 OF 2022**

**K OCHARO, J
APRIL 27, 2023**

BETWEEN
KENYA NATIONAL UNION OF SERVICE EMPLOYEES CLAIMANT
AND
ONE FACILITY MANAGEMENT RESPONDENT

RULING

1. Through an application expressed to be pursuant to the provisions of section 12 [3] [i],[ii], [iii] of the *Employment and Labour Relations Act, 2016*, section 74 of the *Labour Relations Act 2007*, rules 16 and 17 of the *Employment and Labour Relations Court [Procedure] Rules, 2016*, and article 41 of the *Constitution of Kenya* the claimant/applicant seeks:
 - i. Spent
 - ii. That the Honourable Court be pleased to issue an order compelling the Respondent to deduct and remit union dues as per the check off list because of them being members of the Claimant union.
 - iii. That the Honourable Court be pleased to issue any order it may deem fit and expedient.
 - iv. That the cost of this application be provided for by the Respondent.
 - v. That an order be issued compelling the Respondent to pay union dues from his pocket to serve as a deterrent to other employees who always frustrate unions whenever served with check off notices authorizing deductions.
2. The application is supported by the affidavit of Joseph Odhiambo of the May 9, 2022.
3. The Respondent opposes the application upon basis of the ground[s] obtaining on the Grounds of objection dated June 7, 2022.



4. In response to the grounds of objection, the Claimant/Applicant filed a further affidavit, sworn on the June 13, 2022, by the deponent of the supporting affidavit hereinabove mentioned.

The Applicant's Application.

5. The Applicant states that on the 29th February 2021, it served the Respondent with a check off notice containing names of its employees who had acknowledged their membership in the Applicant union.
6. Further that on June 21, 2021 and July 21, 2021, the Claimant/Applicant wrote to the Respondent asking it to remit union dues, but the Respondent never responded nor deducted the union dues.
7. Subsequently, on or about the August 9, 2021, the Applicant lodged a dispute with the Cabinet Secretary for Labour and on January 31, 2022 a conciliator was appointed.
8. The Applicant further stated that the conciliator called several meetings for various dates but the Respondent failed to attend the meetings. Consequently, a certificate of unresolved dispute was issued on March 28, 2022.
9. The Applicant asserts that the Respondent's acts amount to a violation of employees' rights to join a union of their own choice, and an impediment to it to meet its monthly financial obligations like paying rent and allowance for workers.

The Respondent's Response.

10. In opposition to the Applicant's application, the Respondent raises the following grounds:
 - i. That the Claimant is destitute of the requisite standi to seek the orders in the application pursuant to the provisions of section 54 [3] of the *Labour Relations Act*, for want of a recognition agreement between the parties, a fact that the Claimant / Applicant has explicitly admitted in its notice of motion application herein.
 - ii. The orders sought by the Claimant/Applicant are in the nature of mandatory injunctions, which orders cannot be granted at an interlocutory stage unless under special circumstances. The Claimant has neither pleaded nor demonstrated any special circumstance in the application.
 - iii. The alleged members of the Claimant union are no longer employees of the Respondent.

Determination

11. I have carefully considered the Applicant's application and the orders sought therein. The orders sought are substantially word by word as the reliefs sought in the reliefs section of the statement of claim. Considering that the application is an interlocutory application, rendering myself on the application and the orders sought therein, shall expose the court to the risk of accusation of a predetermination on the substance of the main suit. The exposure is unnecessary and unwarranted.
12. The matters raised in the two affidavits by the Applicant are matters that cannot be adequately canvassed by way of affidavit evidence. Too, the matters raised in the Respondent's grounds of objection, are in nature those that require substantiation by way of oral evidence.
13. By reason of the premises, the orders sought by the Applicant are orders that this court cannot grant at this stage. Consequently, the Applicant's notice of motion application herein is dismissed with costs.

DATED, READ AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF APRIL, 2023.



OCHARO KEBIRA

JUDGE

Delivered in presence of:

Mr. Joseph Odhiambo for the Claimant Union.

Mr. Ochoe for the Respondent.

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

