



**Kenya National Private Security Workers Union v Maps Security Investment
(Cause 51 of 2020) [2023] KEELRC 1413 (KLR) (8 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1413 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 51 OF 2020
MA ONYANGO, J
JUNE 8, 2023**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
MAPS SECURITY INVESTMENT RESPONDENT**

JUDGMENT

1. The Claimant is a trade union registered under The *Labour Relations Act* to represent employees in the private security sector.
2. The Respondent is an organization which operates a private security firm and employs security guards.
3. The Claimant therefore has jurisdiction to represent the employees of the Respondent in labour matters.
4. The Claim herein was filed by the Claimant vide a Memorandum of Claim dated November 16, 2020 wherein the Court is invited to issue the following orders.
 - i. The full implementation of the Protective Security Services Order and the amendments thereof.
 - ii. The full implementation of the subsequent General Minimum Wages Orders.
 - iii. The payment in arrears of all underpayment of wages to its employees
 - iv. The payment of overtime and such payment be made in arrears to all the employees affected
 - v. The payment of all public holidays worked and not paid as required.
 - vi. The Respondent to respect the employees to join the claimant union without any form of intimidation or victimization.(sic)



- vii. That the County Labour officer, Eldoret is involved in implementing in full the regulation of wages (Protective Security Services Order) and the general wages orders.
 - viii. That the Respondent to pay the cost of the dispute as per section 49(1)A
 - ix. The court to order the Respondent to produce the certificate of its verification.
5. In that Memorandum of claim, it is alleged that this claim has been necessitated by the Respondent's refusal to cooperate with the Claimant and further, that the Respondent has continued to violate the rights of its workers by underpayment of wages, non-payment of overtime, public holidays, leave and traveling allowances as required by law.
 6. The Claimant states that it reported a dispute to the Ministry of Labour which accepted the dispute under section 62 of the [Labour Relations Act](#) and appointed Ms Caroline Chemursoi of Eldoret County Labour Office as Conciliator. The Respondent however refused to attend conciliation meetings called by the Conciliator who by letter dated November 8, 2018 issued a Certificate of Unresolved Dispute paving way for the filing of the instant suit.
 7. The Memorandum of Claim and Summons to Enter Appearance were served upon the Respondent on November 18, 2020 and an affidavit of service sworn by the process server Mr Kenneth O Oduor was duly filed on December 14, 2020.
 8. The Respondent did not enter appearance and nor did it file a defence to the Statement of Claim.
 9. The suit is therefore undefended and the court on May 10, 2021 certified the same ready for hearing as an undefended suit.
 10. The suit was disposed of by way of written submissions. In its submissions the Claimant reiterated the averments in the Memorandum of Claim.
 11. The issues for determination are therefore whether the Claimant has proved that the Respondent has violated the rights of its employees by underpayment of wages, non-payment of overtime, public holidays, leave and housing allowances.
 12. In an undefended claim like the instant claim the Claimant, being a trade union, is required to prove that it has mandate to represent the workers on whose behalf the suit is filed as a preliminary point. It is only thereafter that it is required to prove the averments against the Respondent.
 13. Proof of mandate can be by way of a recognition agreement or check-off forms signed by employees. The union may also produce receipts of either membership fees or subscriptions paid directly to the union by members, or membership cards. Section 52 of the [Labour Relations Act](#) permits an employee to make direct payments to the union. The Section provides as follows:

Nothing in this Part prevents a member of a trade union from paying any dues, levies, subscriptions or other payments authorised by the constitution of the trade union directly to the trade union.
 14. The Claimant has not submitted any evidence to prove that it has recruited any employees of the Respondent into its membership to authorize it to represent the said workers.
 15. The Claimant has further not adduced any evidence such as letters of appointment or pay slips to prove that the workers were underpaid. There is further no evidence adduced by the Claimant of non-payment of overtime, public holidays, leave and housing allowances.
 16. Coming to the prayers sought by the Claimant, there is no tabulation of the itemized claims. The Court cannot make blanket orders as sought by the Claimant under prayers 1, 2, 3, 4, 5, 6, 8 and 9.



17. The only prayer that lends itself to granting by the Court is prayer 7, that the County Labour officer, Eldoret is involved in implementing in full the *Regulation of Wages (Protective Security Services) Order and the General Wages Orders*.

18. Sections 35 of the *Labour Institutions Act* and section 87 of the *Employment Act* donate such powers to Labour Officers as follows:

Section 87 of *Employment Act*

Xii – Disputes Settlement Procedure 87. Complaint and jurisdiction in cases of dispute between employers and employees

1. Subject to the provisions of this Act whenever—
 - a. an employer or employee neglects or refuses to fulfill a contract of service; or
 - b. any question, difference or dispute arises as to the rights or liabilities of either party; or
 - c. touching any misconduct, neglect or ill-treatment of either party or any injury to the person or property of either party, under any contract of service,
The aggrieved party may complain to the labour officer or lodge a complaint or suit in the Industrial Court.
2. No court other than the Industrial Court shall determine any complaint or suit referred to in subsection (1).
3. This section shall not apply in a suit where the dispute over a contract of service or any other matter referred to in subsection (1) is similar or secondary to the main issue in dispute.

Section 35 of *Labour Institutions Act*

A labour officer may, for the purpose of monitoring or enforcing compliance with any labour law—

- a. require the production of wage sheets or other employment records kept by an employer, and records of payments made to outworkers by persons giving out work, and any other such records as are required by any labour law or wages order to be kept by employers, and to inspect and examine those sheets or records and copy any material part thereof;
- b. require any person giving out work and any out-worker to give any information which is in that person's power to give with respect to the names and addresses of the persons to whom the work is given or from whom the work is received and with respect to the payments to be made for the work;
- c. ...
- d. examine, either alone or in the presence of any other person, with respect to any matter under Part VI, any person whom the labour officer has reasonable cause to believe to be or to have been an employee to whom a wages order applies or applied or the employer of any such person or a servant or agent of the employer employed in the employer's business, and to require every such person to be so examined and to sign a declaration of the truth of the matters in



respect of which he is so examined: Provided that no person shall be required to give any information that incriminates him;

- e. ...
- f. at all reasonable times, require an employer to produce an employee employed by him and a document relating to the employment of any employee, and may require an employee to produce any document relating to the employee's employment;
- g. examine and make copies of a register, record, book or other document relating or appearing to relate to employment, and seize any register, record, book or other document which he has reasonable ground to believe to be or to contain evidence of an offence under this Act or any other labour law; [Rev 2012] No 12 of 2007 Labour Institutions 13 [Issue 1]
- h. ...
- i. ...
- j. ...
- k. without prejudice to the powers of the Attorney-General, institute proceedings in respect of any contravention of any provision of this Act or for any offence committed by an employer under this Act or any other labour law;
- l. institute an appeal on behalf of any employee in any civil proceedings by an employee against his employer in respect of any matter, thing or cause of action arising out of or in the course of the employment, whether such civil proceedings are contemplated or instituted by the employee himself or are civil proceedings ordered by a magistrate;
- m. ...

19. Further, section 26 of the [Employment Act](#) and section 48 of the [Labour Institutions Act](#) provide for basic minimum terms of employment as follows:

Section 26 of [Employment Act](#)

Basic minimum conditions of employment

1. The provisions of this Part and Part VI shall constitute basic minimum terms and conditions of contract of service.
2. Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee than the terms provided in this Part and Part VI, then such favourable terms and conditions of service shall apply.

Section 48 of [Labour Institutions Act](#)

1. Notwithstanding anything contained in this Act or any other written law—
 - a. the minimum rates of remuneration or conditions of employment established in a wages order constitute a term of employment of any employee to whom the wages order applies and may not be varied by agreement;



- b. if the contract of an employee to whom a wages order applies provides for the payment of less remuneration than the statutory minimum remuneration, or does not provide for the conditions of employment prescribed in a wages regulation order or provides for less favourable conditions of employment, then the remuneration and conditions of employment established by the wages order shall be inserted in the contract in substitution for those terms.
 2. An employer who fails to—
 - a. pay to an employee to whom a wages regulation order applies at least the statutory minimum remuneration; or
 - b. provide an employee with the conditions of employment prescribed in the order, commits an offence No 12 of 2007 [Rev 2012] Labour Institutions [Issue 1] 20
 3. If an employer is found guilty of an offence under subsection (2), the court may in addition to any other penalty order the employer to pay the employee the difference between the amount which ought to have been paid in terms of the wages order and the amount which was actually paid.
 4. Where proceedings are brought under subsection (2) in respect of an offence consisting of a failure to pay remuneration at the statutory minimum remuneration or to provide an employee with the conditions of employment prescribed in the order, then—
 - a. if an employer is found guilty of the offence, evidence may be given of any like contravention on the part of the employer in respect of any period during the twelve months immediately preceding the date of the offence; and
 - b. on proof of such contravention, the court may order the employer to pay the difference between the amount which ought to have been paid during that period to the employee by way of remuneration and the amount actually paid: Provided that evidence shall not be given under paragraph (a) unless notice of intention to give such evidence has been served upon the employer together with the summons, warrant, information or complaint.
 5. The powers given by this section for the recovery of sums due from an employer to an employee shall be in addition to and not in derogation of any right to recover such sums by civil proceedings: Provided that no person shall be liable to pay twice in respect of the same cause of action.
20. A Labour officer therefore has wide powers under the sections referred to above to supervise implementation of the minimum statutory terms of employment by all employers.
21. In the final analysis, I find that the Claimant has failed to prove that it is entitled to the prayers sought in the Memorandum of Claim with the exception of prayer 7 thereof which I grant as follows:
 The County Labour officer, Uasin Gishu County be and is hereby directed to ensure the implementation in full of the *Regulation Of Wages (Protective Security Services) Order and the Regulation (General) of wages Order* by the Respondent herein and to file a report to that effect within 60 days.
22. The case shall be mentioned on July 19, 2023 to confirm compliance by the County Labour Officer



23. A copy of this Judgment to be sent to the County Labour Officer, Uasin Gishu and the Labour Commissioner through the office of the Registrar, Employment and Labour Relations Court.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 8TH DAY OF JUNE, 2023.

MAUREEN ONYANGO

JUDGE

