



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 124 OF 2017

KUDHEIHA WORKERS.....CLAIMANT

VERSUS

MAKHOKHO SECONDARY SCHOOL.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant lodged this claim through a Memorandum of Claim dated 30th March, 2017, seeking that the court compels the Respondent to remit Union dues from its own funds and negotiates a collective bargaining agreement with the Claimant based on the already existing recognition agreement between the parties herein.
2. The Respondent filed a Response to the Claimant's claim on 13th September, 2017, wholly denying the Claimant's claim.
3. Parties canvassed the Claim through written submissions. The Claimant filed their submissions on 7th October, 2021.
4. The Respondent did not file submissions in the matter.

The Claimant's Case

5. The Claimant's case is that the Respondent's workers willingly joined their Union and a recognition agreement signed between the parties herein on 14th June, 2005.
6. It is the Claimant's case that it on several occasions sent correspondences to the Respondent seeking remittance of union dues. It is the Claimant's further case that the Respondent failed to remit the dues as requested.
7. It is the Claimant's case that arising from the Respondent's refusal to remit the union dues, their Secretary General escalated the matter to the Minister for labour who appointed a Mr. G. Abuto to conciliate between the parties.
8. The Claimant's further case is that the conciliator invited the parties herein to a conciliation meeting on 24th July, 2014. The Claimant asserts that the conciliation failed to bear fruits resulting in the conciliator issuing a certificate of unresolved dispute.

The Respondent's Case

9. The Respondent denies having agreed to remit Union dues to the Claimant as alleged. It is the Respondent's further case that their staff have never indicated being discontented by the none remission of union on their behalf.
10. It is the Respondent's case that they have never withheld any dues from their staff on account of union dues.
11. The Respondent states that it would not forward union dues payable by their staff to the Claimant's without the express authority and consent of the employees.
12. It is the Respondent's case that the Claimant is not entitled to the reliefs sought.

The Claimant's Submissions

13. It is submitted for the Claimant that the Respondent's workers have a right to belong to a trade union of their choice for purposes of representation.

14. The Claimant submitted that the Minister for Labour vide Kenya Gazette notice No. 3585 of 1994, authorized the remittance of Union dues to the Claimant and as such, the Respondent is bound under Section 48 of the Labour Relations Act, 2007, to deduct and remit union dues from its unionisable employees to the Claimant.

15. It is the Claimant's submission that between 14th July, 2001 and 14th July, 2004, the Claimant recruited 22 employees of the Respondent to its membership and that the Respondent deducted Union dues from then up to the year 2014, when the Respondent had a new Principal who stopped the deductions.

16. The Claimant submitted that the Respondent has been deducting union dues from the membership of the Claimant and not remitting the same to the Claimant as required under the law. It is the Claimant's submission that this action of the Respondent is oppressive and contrary to the law and it violate Sections 48, 49, 50 and 51 of the Labour Relations Act.

17. The Claimant further submitted that the employees of the Respondent who are her members, have never issued any notice of withdrawal or resignation from the trade union.

Determination

18. The Issues for determination in the matter are:

- i. Whether the Respondent owes the Claimant union dues deducted from its membership
- ii. Whether the Claimant is entitled to negotiate a collective Bargaining agreement with the Respondent
- iii. Who bears the costs of the suit.

Whether the Respondent owes the Claimant Union dues deducted from its Membership

19. The Claimant's case is that it signed a recognition agreement with the Respondent on 14th June, 2005.

20. The Respondent's case is that it could not remit union dues payable by their staff to the Claimant's without the express authority and consent of the employees. The Claimant's evidence is that it has recruited 22 staff of the Respondent to its membership and submitted Form S with the names and identity card numbers of the staff recruited.

21. Deduction of Union dues is governed by Section 48 (2) and (3) of the Labour Relations Act, which states as follows:

“(2) A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to—

(a) deduct trade union dues from the wages of its members; and

(b) pay monies so deducted—

i. into a specified account of the trade union; or

ii. in specified proportions into specified accounts of a trade union and a federation of trade unions.

(3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.”

22. The Claimant's submission is that it has recruited 22 unionisable employees of the Respondent to its membership. The list with the names of the employees recruited and their identification card numbers has been produced before this court. Although the Respondent denies having authority/consent of the employees to remit union dues to the Claimant, the law does not require further authority/consent besides Form S provided in the third schedule to the Labour Relations Act.

23. The Respondent has not produced evidence suggesting that the 22 employees recruited from their employ to the membership of the Claimant, have withdrawn/ left the membership of the Claimant.

24. The Claimant has produced before this court, pay slips of the Respondent's staff recruited to the membership of the Claimant. The pay slips indicate that the Respondent has been deducting union dues from the members of the respondent on behalf of the Claimant. The deductions have not been remitted to the Claimant as required by law.

25. I find and hold that the Respondent deducted union dues from the salaries of the members of the Claimant and failed to remit the monies to the Claimant, as required under Section 48(2)(b)(i) of the Labour Relations Act.

Whether the Claimant is entitled to negotiate a collective bargaining agreement with the Respondent

26. Articles 36 and 41(1)(5) of the Constitution, guarantees rights to form, join and participate in the activities of a trade union and further confers them with the right to engage in collective bargaining, possible only upon recognition.

27. Section 54 (1) of the Labour Relations Act, provides as follows in regard to recognition agreements:

“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.”

28. The evidence before this court is that the Respondent entered into a recognition agreement with the Claimant herein on 14th June, 2005. To have qualified for this recognition, goes to say that the Claimant met the threshold provided under Section 54 of the Labour Relations Act.

29. Section 57 of the Labour Relations Act, provides as follows in regard to collective bargaining: -

“(1) An employer, group of employers or an employers’ organisation that has recognised a trade union in accordance with the provisions of this Part shall conclude a collective agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.”

30. The Respondent having recognized the Claimant, is by virtue of Section 57 of the Labour Relations Act, obligated to negotiate a collective Bargaining agreement with it. The Respondent has not denied the recognition agreement produced before this court.

31. I find and hold that the Respondent is by law bound to negotiate a collective bargaining agreement with the Claimant.

32. In conclusion, I make orders as follows: -

- i. That the Respondent remits all monies deducted in respect of Union dues from the membership of the Claimant to the Claimant’s account within 30 days of this judgment.
- ii. That henceforth, the Respondent shall deduct and remit union dues to the Claimant at the end of every month.
- iii. That the Respondent is hereby compelled to negotiate a Collective Bargaining Agreement with the Claimant.

40. Each party shall bear their own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 27TH DAY OF JANUARY, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Antonio Shikaku h/b for Mr. Kamuye for the Claimant

N/A for the Respondent

Christine Omollo- C/A