



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

**CAUSE NO. 1020 OF 2016**

**(Before Hon. Lady Justice Anna Ngibuini Mwaure)**

**KENYA NATIONAL PRIVATE**

**SECURITY WORKERS UNION.....CLAIMANT**

**VERSUS**

**GYTO SECURITY SERVICES LIMITED.....RESPONDENT**

**JUDGEMENT**

**INTRODUCTION**

1. The Claimant is a registered trade union registered under Section 19 of the Labour Relations Act 2007 and mandated to represent the industrial interest of employees engaged in private security industry.
2. The Respondent is duly registered security provider for purposes of this suit.

**CLAIMANT'S EVIDENCE**

3. The Claimant states that employees working for Respondent had voluntarily joined the union on diverse dates from 2015 and are still recruiting members.
4. The Claimant says the members were recruited by way of check-offs under Section 48 of the Labour Relations Act and sent the names to the Respondent to effect deductions.
5. The Claimant state it is a travesty of justice to victimize and harass the members and even sacking them for joining the union of their choice which is what the Respondent is doing.
6. The Claimant prays for the following orders:-
  - (i) Respondent to deduct and remit the union dues from date of check-offs forms signed by unionized members under Section 48 of the Labour Relations Act.
  - (ii) That union dues deducted be deposited in Claimant's gazetted account.
  - (iii) Respondent be ordered not to intimidate and victimize, harass or sack any worker involved in union activity.
  - (iv) Court to order Respondent to allow workers to be organized and engaged in union of their choice.
  - (v) Respondent to meet costs of this cause.

**RESPONDENT'S CASE**

7. The Respondent did not file their response and so the case is undefended.

**ISSUES FOR DETERMINATION**

8. (i) Did the Respondent fail to remit union dues deducted from members of the Claimant union?
- (ii) Did the Respondent victimize and intimidate and threaten the members of the Claimant union.
- (iii) Is the Respondent entitled to the reliefs sought.

### **DECISION**

9. The rights of labour are captured succinctly in Article 41 of the Constitution of Kenya 2010. The unionisable employees enjoy unfettered rights to join a union of their choice according to the Constitution.

10. Article 48 of the Labour Relations Act provide:-

- (i) In this part “trade union dues” means a regular subscription required to be paid to a trade union as a condition of membership.
- (ii) A trade union may, in the prescribed form request the Minister prescribed to issue an order directing an employer of more than five members belonging to the union to:-
- (iii) (a) deduct trade union dues from wages of its members and
- (b) pay monies so deducted into a specified account of a trade union.

11. There is authority to deduct union dues from the salaries of the members which is Section 49 of the Labour Relations Act and is by check-offs forms. The check-off forms in this matter are filed in court as exhibits. There is also a gazette notice by the Minister for Labour which also sets out the amounts to be deducted as provided in Section 48(2) of the Labour Relations Act – gazette Notice dated 29<sup>th</sup> July, 2012.

The Claimant avers he submitted a list of 56 employees to the Respondent on 29<sup>th</sup> June, 2016 but the Respondent refused to effect deductions. The Claimant also says the Respondent was targeting and victimizing unionisable employees who joined the Claimant union.

12. The Respondent having failed to put a response has not controverted any of these averments and neither has they put up any defence.

In the case of **KENYA NATIONAL PRIVATE SECURITY WORKERS UNION VS LAVINGTON SECURITY LIMITED CAUSE NO.2045 OF 2015** the learned Judge in her ruling found that the Respondent did not deny having received the check-off forms and did not explain why they did not deduct the remittances.

Similarly in this case I find the Respondent have not given any explanations of the charges levelled against them. Therefore, I am persuaded the Claimant has established a prima facie that the Respondent failed to effect the remittances as provided in the Labour Relations Act and to remit them to the union.

### **REMEDIES**

13. The court therefore grants the following orders:-

- (a) That the Respondent deduct and remit union dues from the date the check-off forms were signed by the unionisable members in accordance to Section 48 of the Labour Relations Act.
- (b) That the union dues be deposited in the Claimant’s gazetted Account.
- (c) That the Respondent be ordered not to intimidate, victimize, harass or sack any worker involved in the union activity.
- (d) The Respondent to allow workers to be organized and engaged in a union of their choice.
- (e) The Respondent to pay the costs of this cause to the Claimant.

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 24TH DAY OF FEBRUARY 2022.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

**ANNA NGIBUINI MWAURE**

**JUDGE**