



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. E020 OF 2020

KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS.....CLAIMANT

VERSUS

RETAIL MANAGEMENT SOLUTIONS LTD.....1ST RESPONDENT

HANDYMAN STAFFING SOLUTION.....2ND RESPONDENT

VINEYARD INTERNATIONAL COMPANY LTD.....3RD RESPONDENT

WEST KENYA SUGAR COMPANY LTD.....4th RESPONDENT

RULING NO. 2

1. The Kenya Union of Sugar Plantation & Allied Workers (the Union) entered into a recognition agreement with West Kenya Sugar Co Ltd (West Kenya) around 5 February 1997.
2. Sometime around June 2020, West Kenya decided to outsource labour from Retail Management Solutions Ltd, Handyman Staffing Solutions and Vineyard International Co. Ltd (the Respondents).
3. West Kenya, therefore, sent some of its employees to the Outsourcing Respondents.
4. On 13 October 2020, the Union wrote to the Respondents, notifying them that several of the employees they had recruited and sent to West Kenya had been its members and, therefore, they should continue effecting monthly union deductions.
5. The Union followed up with fresh recruitment of more employees, and it sent Form S(s) to the Respondents on 15 October 2020. It asked them to commence the deduction of union subscriptions.
6. The Union further notified the Respondents of more members through a letter dated 19 October 2020.
7. The Respondents did not effect union deductions, and on 17 November 2020, the Union sued the Respondents and West Kenya, and it stated the Issue in Dispute as:
 - i. Refusal by the 1st, 2nd and 3rd Respondents to deduct and remit union dues.
 - ii. Refusal by the 1st, 2nd and 3rd Respondents to recognise the Claimant union.
 - iii. Denied union officials access to the 4th Respondents premises/factory by the 4th Respondent.
8. Filed at the same time was a motion seeking various interim orders. The Court heard and determined the Motion in a ruling delivered on 18 January 2021.
9. In the Ruling, the Court granted the following orders:
 - (i) The Respondents to effect deduction of union dues from the wages/salaries of workers who have signed Forms S(s)

acknowledging membership of the Claimant Union and to remit the monies so deducted into the Claimant's union's accounts from January 2021.

(ii) In default, the Respondents to pay from their own funds such accrued union subscriptions backdated to November 2020.

10. On 12 July 2021, the Union moved the Court seeking orders:

i. ...

ii. THAT the Respondents be ordered to pay union deductions from their own funds, such accrued union subscriptions backdated to November 2020.

iii. THAT in the alternative, there be an order that the Respondents directors do appear in person and explain why they have disobeyed court orders issued on 18th January 2021.

iv. THAT costs of this application be provided for.

12. The grounds in support of the application were that despite the Respondents being aware of the court orders of 18 January 2021, they had refused and or failed to commence the deduction of union subscriptions.

13. A director of the 1st Respondent filed a replying affidavit in opposition to the Motion on 16 December 2021.

14. In the affidavit, the director exhibited copies of cash deposits made into the Union's bank accounts regarding employees who had subscribed to the Union and four letters from employees instructing the company to stop the deduction of union subscriptions.

15. The director also deponed that some of the employee signatures in Form S appeared not to be genuine.

16. A director of the 2nd Respondent also filed a replying affidavit on the same day. He also exhibited copies of bank deposit slips and copies of letters from some of the employees indicating withdrawal from the Union.

17. The affidavit also raised a question on inconsistencies of the signatures on the Form S.

18. The General Secretary of the Union filed a further affidavit on 26 January 2022, stating that the Respondents had not given a schedule of the employees from whom the deductions were made.

19. The General Secretary also lamented that the Union's attention had not been drawn to the inconsistencies in the Form S.

20. The Union filed its submissions on 11 February 2022. It reiterated the assertions in the affidavits.

21. The Respondents' submissions were not on record by the agreed timelines.

21. The Court has considered the record, Motion, affidavits, and submissions.

22. For a finding of contempt to be made, a party asserting that there is contempt should demonstrate that there is a court order, the other party has been aware of the order and that there has been wilful default or failure to comply with the court order.

23. It is not in dispute herein that there is a court order and that the Respondents were aware of the order.

24. The issue is whether there has been wilful disobedience of the court order.

25. The Respondents have placed evidence before the Court to demonstrate some compliance with the Court order of 18 January 2021. They have also presented union withdrawal letters from some of the employees.

26. The Court cannot interrogate whether the withdrawal letters are valid or not at this interlocutory stage.

27. Therefore, the Court is unable to find the Respondents to be in contempt.

28. The Motion dated 12 July 2021 is dismissed with no order on costs.

29. The Court notes that the cause of action before it is a trade dispute. In this respect, the Court will call upon the parties to address whether it has jurisdiction considering the provisions of Part VIII of the Labour Relations Act.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 11TH DAY OF APRIL 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union P.D. Onyango & Co. Advocates

For 1st and 2nd Respondents Reuben Masese & Co. Advocates

For 3rd Respondent M. Kiveu & Co. Advocates

For 4th Respondent did not participate

Court Assistant Chrispo Aura