



**Kenya Private Workers Union v Zetech University (Cause
E120 of 2022) [2022] KEELRC 4026 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4026 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E120 OF 2022
M MBARÚ, J
JUNE 30, 2022**

BETWEEN
KENYA PRIVATE WORKERS UNION CLAIMANT
AND
ZETECH UNIVERSITY RESPONDENT

RULING

1. The claimant filed dated 22nd February, 2022 seeking that a prohibitory orders do issue against the respondent restraining it from victimising or terminating the unionisable employees and members of the claimant on grounds of trade union affiliation and that the claimant be allowed access to the respondent's premises to assess both potential members until the suit herein is heard.
2. The claimant is also seeking for orders that the respondent be directed to comply with the provisions of Section 48 of the *Labour Relations Act* by way of deducting and remitting union dues from the claimant members who have joined the union and check off forms have been submitted.
3. The claimant filed the Affidavit of Peter Emisembe Owiti and on the grounds that under Section 74 of the LRA allow matters concerning refusal to access to be referred to the court and the respondent is in breach of the workers fundamental rights under Article 36 and 41 of *the Constitution*. despite filing check off forms with the respondent, there is no deduction or remittance of trade union dues with regard to members of the claimant.
4. The respondent has now threatened to terminate and victimise the claimant members who are unionist and the orders sought should issue.
5. In reply the respondent filed the Replying Affidavit of Judy John the legal counsel and who avers that the respondent has not victimised or terminated any employment of the claimant members as alleged. The respondent follows the due process before employment is terminated.



6. No employee has been dismissed as alleged. Upon receipt of the list and forms forwarded by the claimant the respondent verified and ascertained that some check off forms were not properly executed and did not contain proper identification details and were not accompanied by the employees consent for check off. Despite a response to the claimant in this regard, this was not addressed.

Determination

7. The claimant is seeking for a mandatory injunction order against the respondent with regard to stoppage of victimisation and termination of employment for its members, that the claimant be allowed to access to potential members and that the respondent be directed to deduct and remit trade union dues to the claimant based on the forwarded check off forms.
8. The respondent on the other hand contests the orders sought on the grounds there is no matter and evidence that there is victimisation of any employee or that there is unlawful termination of employment as alleged and further that the check off forms placed with them; upon analysis there records were not correct.
9. The orders sought by the claimant are replicated in the Memorandum of Claim.
10. To grant the orders sought at this stage will deny the court crucial evidence and matter for the parties to address particularly with regard to the alleged victimisation of the claimant members, the nature and details of the check off forms forwarded to the respondent and ultimately the court may not arrive at a fair judgement.
11. In this regard, parties shall close pleadings and secure a hearing date at the registry.
12. In the interim and to secure the claimants interests and those of its members who have joined the trade union, the claimant is at liberty to apply the provisions of Section 52 of the LRA and ensure its members effect trade union dues/subscriptions directly pending hearing of the main claim.
 52. Direct payment of trade union dues 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.
13. The orders sought in the interim and on the contested facts shall not issue.
14. Accordingly, application dated 2nd February 2022 is declined. Parties shall close pleadings within 30 days and take a hearing date at the registry.

DELIVERED IN COURT AT NAIROBI THIS 30TH DAY OF JUNE, 2022.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Peter Kigotho

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