



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 34 OF 2020

KENYA UNION OF SUGAR PLANTATION

AND ALLIED WORKERS.....CLAIMANT/APPLICANT

VERSUS

KIBOS SUGAR & ALLIED INDUSTRIES LIMITED.....RESPONDENT

RULING

1. The applicant Union filed a Notice of Motion Application dated 19/5/2021 seeking grant of prayers 1 and 2 pending the hearing and determination of the Application *interpates*.
2. The Court granted prayers 1 and 2 as prayed *exparte* and gave directions for *interpates* hearing.
3. The application is supported on grounds 1 to 11 set out on the Notice of Motion and buttressed in the supporting Affidavit of Francis B. Wangara, the General Secretary of the Claimant Union.
4. The nub of the grounds set out by the Applicant union is that they have a Collective Bargaining Agreement with the respondent. They also have a Recognition Agreement signed on 15/4/2011. That Respondent commenced deducting union dues from the claimant/Applicant's members and remitting same to a designated union account since then.
5. That the Respondent stopped deducting and remitting Union dues to the Union since January, 2020. That this action was done unilateraly and is unlawful and violates Article 41 of the Constitution and Section 48 of the Labour Relations Act, 2007. That negotiations with the respondent to resume deducting and remitting union dues have failed. That the union will suffer irreparable harm if the application is not granted.
6. The respondent filed replying affidavit to the application on 17/6/2020 sworn by David Odunga, Human Resource Manager of the respondent on 16/6/2020 deposing *inter alia* that on 8/2/2020, several employees of the respondent held a meeting at the Agricultural Hostel and made several resolutions including that employees of the respondent would withdraw from the union after the Union had called the workers to go on strike on 20/1/2020.
7. That the said employees wrote a letter dated 18/2/2020 to the respondent indicating that they had resolved to withdraw from the Union. The letter is attached and marked annexure "KSAIL5".
8. The letters of withdrawal were served on the claimant/applicant.
9. That suspension of employees who had been engaged in incitement was lifted as per annexure "KSAIL7".
10. That some of those employees returned to resume duty and notices to show cause were issued to them as per Annexure 'KSAIL8.'
11. That on 21/5/2020, one Mr. G. I. Gondosio addressed the Union and suggested that the parties meet and resolve the dispute amicably.
12. That instead the claimant union rushed to Court. That Mr. G.I. Gondosio, was a Conciliator from the Labour Office and the Union ignored his advice and rushed to Court.
13. That the application lacks merit and it be dismissed.

Determination

14. Prayers 1 and 2 of the application are spent by dint of interim Orders issued exparte.

15. A closer look at the Notice of Motion has led the Court to the Conclusion that the Notice of Motion does not contain any prayers to be granted upon interpartes hearing of this application pending the hearing and determination of claim.

16. The Notice of Motion reads thus:-

3. That the respondent be ordered to resume deductions of Union dues from the claimant/applicant members and remit the same to the claimants/applicants without further delay.

4. That respondent be barred from intimidating and coercing the claimant/applicant members into withdrawing from the Union.

5. That the respondent, his agent(s) or managers(s) or supervisors(s) and or any other person(s) serving the interest of the respondent be restrained/stopped from threatening, victimizing, terminating and/or dismissing any of the claimant's members by virtue of being Union members.

6. That the costs of this suit be provided for by the respondent.”

17. The remaining prayers 3,4, 5 and 6 are final in nature and may only be granted upon the hearing and determination of the claim.

18. The Court cannot grant further interim Orders that have not been prayed for by the claimant/applicant Union.

19. The Court therefore cannot confirm and/or extend the prayers granted exparte since they have been spent upon hearing of the application interpartes there being no specific prayers to that effect.

20. Accordingly, the Application is defective as it lacks relevant prayers to be considered for grant upon hearing the Application interpartes.

21. Accordingly, the Application lacks merit and is dismissed with costs in the cause.

Dated and delivered at Nairobi this 18th day of February, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 18 of the Civil 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Lincoln Aveza Isagi Secretary General of the Union

Onsongo & Co. Advocates for the Respondent.

Chrispo: Court clerk.