



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. E007 OF 2020**

**KENYA NATIONAL UNION OF NURSES.....CLAIMANT**

**V**

**BUSIA COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**BUSIA COUNTY PUBLIC SERVICE BOARD...2<sup>nd</sup> RESPONDENT**

**RULING**

1. The Kenya National Union of Nurses (the Union) and the County Government of Busia (the County Government) have a recognition agreement and the County Government has been deducting and remitting union dues to the Union.

2. On 14 August 2020, the County Government wrote to the Kenya County Government Workers Union, the Kenya National Union of Pharmaceutical Technologists, the Kenya Union of Medical Laboratory Technologists, the Kenya Union of Clinical Officers, the Kenya Medical Practitioners, Pharmacists and Dentists Union and the Union applicant herein stating

The County Government of Busia has been deducting and remitting union dues from members on behalf of the workers unions. Regrettably however, we note with concern that such dues are occasionally not remitted to the Unions on time due to circumstances beyond our control causing unnecessary delays in your operations.

In order to alleviate this problem, it has therefore been decided that you be advised to subsequently make necessary arrangements to collect/recover any dues from your members directly from the date of receipt of this letter.

3. The letter prompted the Union to move the Court under a certificate of urgency on 2 October 2020 seeking orders

1. ...

2. THAT an ex-parte interim order be and is hereby issued staying the decision by the Respondents to stop deduction and remittance of trade union dues vide a letter Ref: CG/BSA/CS/W UNION 1(50) dated 14<sup>th</sup> August, 2020 pending the hearing and determination of this application.

3. THAT an ex-parte interim order be and is hereby issued directing the Respondents to resume deduction and remittance of union dues as specified in Legal Notice No. 160 of 2018 pending the hearing and determination of this application.

4. THAT an interim order be and is hereby issued directing the Respondents to immediately pay the applicant an amount of Kshs 513,147/10 for the months of August and September 2020, being the undeducted trade union dues and any other subsequent months failure to deduct from their own funds pending the hearing and determination of this application and the main suit.

5. THAT, any other order that the Court deems fit to grant.

6. THAT, the costs of this application be provided for.

4. When the motion was placed before the Court on 1 October 2020, the Court granted an order in terms order 2 as proposed by the Union pending *inter-partes* hearing. The parties were directed to file and exchange affidavits and submissions.

5. The Respondents filed a replying affidavit in opposition to the Motion and a Response to the Statement of Claim on 9 November 2020.

6. On 11 November 2020, the Court directed the parties to file and exchange submissions within agreed timelines.
7. The submissions were not on record by the agreed timelines.
8. On 12 November 2020, the Court dismissed a contempt application by the Union (the contempt arose from orders issued in Kisumu Cause No. 41 of 2019 (consolidated with Kisumu Cause No. 42 of 2019) .
9. The Court has considered the Motion and the affidavits on record.

### **Objections**

10. While objecting to the application, the County Government asserted that the Union had not furnished it with Form S(s). Form S is a statutory form signed by an employee acknowledging union membership and allowing deductions to be made from the employee's wages.
11. The Court finds the objection that the Form S(s) were not sent to the County Government without merit for the Respondents letter under challenge appeared to suggest that deductions had previously been made from the wages of the Union's members.
12. The County Government also objected to the competence of the Motion on the ground that the Union should have moved the Court through judicial review proceedings.
13. The case advanced by the Union related to contractual and statutory breaches which in the view of the Court called for a determination of rights of the parties and, therefore, the manner of approaching the Court (through a Statement of Claim) was competent.

### **Merits of the Motion**

14. The County Government admitted that it had written the notice of 14 August 2020, was aware of the Legal Notice No. 160 of 2018 by the Cabinet Secretary on deduction and remittance of trade union dues and that it was aware of the provisions of section 19 of the Employment Act, 2007 and section 48 of the Labour Relations Act.
15. In terms of sections 48(4) & (5) and 50(8) of the Labour Relations Act, an employer cannot unilaterally decide to stop deducting and remitting trade union dues. Any decision for variation or revocation must be given by the Cabinet Secretary, Labour.
16. Of course, where an employee resigns from a trade union and he has given the requisite notice, the employer would be discharged from the obligation of deducting and remitting trade union dues, which is not the case here.
17. The decision of the County Government signified through its letter of 14 August 2020, in the view of the Court, was a direct assault on the constitutional rights of employees as individuals to associate.
18. Apart from the employee's right to associate, it would be abhorrent to our constitutional democracy to restrict and/or limit an employee's right to dispose of his wages in any lawful manner he so wishes.
19. According to the Court, the decision of the County Government was as well a calculated measure to weaken the Union and thus a subtle attack on the right of the Union to determine its own administration, programmes and activities, and to organise, and a direct challenge to Articles 41(4)(a) & (b) of the Constitution.
20. The County Government must be aware too that where it fails to deduct and submit trade union dues, it may be ordered under the relevant provision of the Labour Relations Act to pay such trade union dues from its own resources.
21. The County Government has and should not have any interest on how its employees dispose of their wages (employers do not make any part contribution in respect of trade union dues) and the excuse that because of circumstances beyond its control makes the deductions intermittent do not hold water.
22. In case of salary delays, the deductions ought to be made and remitted immediately the wages are paid in arrears.
23. The Motion was drafted and presented by an Industrial Relations Officer without any disclosed legal training.
24. The orders as drafted were inelegant.
25. From the foregoing, the Court will allow the Motion in terms as follows
  - (a) THAT an interim order be and is hereby issued staying the decision by the Respondents to stop deduction and remittance of trade union dues vide a letter Ref: CG/BSA/CS/W UNION 1(50) dated 14<sup>th</sup> August, 2020 pending the hearing and determination of the Cause.
  - (b) THAT an interim order be and is hereby issued directing the Respondents to resume deduction and remittance of union dues as specified in Legal Notice No. 160 of 2018 pending the hearing and determination of the Cause.

26. Proposed order 4 must await determination of the Cause on the merits with the risk that the Respondents may have to pay the dues from their own resources/public funds.

27. The Union did not file submissions within agreed timelines. It is denied costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 3<sup>rd</sup> day of February 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For the Union Tyson Kinoti, Industrial Relations Officer

For the Respondent Rogers Sekwe, County Solicitor, Office of the County Attorney

Court Assistant Chrispo Aura