



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 63 OF 2020

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

KAKAMEGA COUNTY PUBLIC SERVICE

BOARD.....RESPONDENT

RULING

1. On 19 August 2020, the Kenya National Union of Nurses (the Union) instituted these proceedings against the Kakamega County Public Service Board and the Issues in Dispute were stated as:

- (i) Unprocedural and wilful deductions of employees' wages by the Respondent.
- (ii) Unfair labour practices by the Respondent.

2. On the same day, the Union filed a Motion under a certificate of urgency seeking orders:

1. ...
2. ...

3. THAT, an interim order be and is hereby granted staying deductions of Kshs 500 by the Respondent itemised as social welfare association contribution from the nurses who are members of the applicant as per the attached list marked TK-2 in the supporting affidavit pending the hearing and determination of this application.

4. THAT an ex-parte interim order be and is hereby granted staying deductions of Kshs 500 by the Respondent itemised as social welfare association contribution from the nurses who are members of the applicant as per the attached list marked TK-2 in the supporting affidavit pending the hearing and determination of the main suit.

5. THAT an order be and is hereby issued directing the Respondent to refund an amount of Kshs 1500 deducted from the wages of the 135 nursing officers employed by the Respondent as per list marked TK-2 and attached in the supporting affidavit and any other amount that may be deducted for the subsequent months pending the hearing and determination of the main suit.

6. THAT costs of this application be provided for.

3. On 21 August 2020, the Court granted an order in terms of proposed order 3 and also directed that the Motion be served and further that parties file and exchange affidavits and submissions ahead of Ruling on notice.

4. The Respondent filed a Replying affidavit sworn by the Hospital Administrator, Kakamega County General Hospital and Statement of Response on 9 September 2020, and the Claimant filed its submissions on 22 September 2020. The Respondent filed its submissions on 1 October 2020.

5. On 2 November 2020, the Union filed another Motion under a certificate of urgency seeking orders:

1. ...

2. THAT summons be issued to the following persons to show cause why they should not be punished for contempt of court

(i) Catherine Otenyo, Secretary Kakamega County General Hospital.

(ii) Victor Zimbulu, the medical superintendent Kakamega County General Hospital.

3. THAT the persons whose names appear in (2) above be committed to civil jail for a period of six months for contempt of court.

4. THAT costs of this application be provided for.

6.. The Court directed the Union to serve this latter Motion (which is the subject of this Ruling), and the Respondent filed its Grounds of Opposition on 16 November 2020.

7. The Union filed submissions in respect to the Motion on 27 November 2020. The Respondent had filed its submissions on 24 November 2020.

8. The Court has given due consideration to the contempt application and found it not only without merit but frivolous as well as vexatious for the following reasons.

9. One, the persons sought to be cited are not members of the County Public Service Board nor the Accounting Officer(s) and therefore have no direct or indirect role in the payroll and/or implementation of orders relating to the payroll.

10. Two, there was material on record before the filing of the contempt application showing that some employees of the Respondent had in the exercise of their right to associate caused to be registered a self-help group called Kakamega County General Hospital Staff Welfare Group on 17 February 2020 and that they had given express instructions to the employer to deduct from their respective remunerations, Kshs 500/- monthly towards the welfare group.

11. Three, none of the employees who subscribed to the welfare group have disowned and/or complained against the deductions. The complaint was self-originated by the Union's Branch Secretary.

12. Four, there is nothing on record to suggest or prove that the Respondent declined to implement requests from some of the members of the Union who requested for the deductions to be stopped.

Conclusion and Orders

13. For the above reasons, the Court finds the Motion dated 2 November 2020 without any merit, and it is dismissed with costs to the Respondent.

Delivered through Microsoft teams, dated and signed in Kisumu on this 10th day of March 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Mr Kinoti, Industrial Relations Officer\

For Respondent Mr Osango instructed by Osango & Co. Advocates

Court Assistant Chrispo Aura