



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.E009 OF 2020

(Before D.K.N.Marete)

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

EMBU COUNTY GOVERNMENT.....1ST RESPONDENT

EMBU COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

JUDGMENT

This matter was originated vide of a Statement of Claim dated 2nd November, 2020. The issues in dispute are therein cited as;

1. *Unfair labour practices by the respondents.*
2. *Refusal by the respondents to deduct and remit union dues from the members of the claimant.*

The Respondent has not filed a response to the claim. She has instead sought to rely on the affidavit of Johnson N.Nyaga sworn on 13th February, 2021 in which she pleads a resumption of union dues deductions upon reactivation of IPPD code for such deductions.

The Claimant’s case is that since September, 2020, the Respondent stopped deducting and remitting union dues despite the claimants demand warning and reprimand on the illegality of such action. This is expressed thus;

6. THAT, since September, 2020, the Respondents stopped deducting and remitting union dues despite the Applicant/Claimant Union vide a demand letter dated 24th September, 2020 (enclosed with a copy of the Legal Notice) stating to the Respondents that refusal to remit union dues would be in violation of section 19 of the Employment Act, section 48 and 50 of the Labour Relations Act and the Legal Notice No.160 of 2018. Section 48 (1 & 2) of Labour Relations states inter alia;

48(1) in this part “trade union dues” means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.”

(2) A trade union may, in the prescribed form, request the Minister to issue an order directing an employer or more than five employees belonging to the union to;

- a) Deduct trade union dues from the wages of its members; and*
- b) Pay monies so deducted into a specified account of the trade union.*

The Claimant’s further case is that an amount of Kshs.682,511.00 falls due and undeducted for the months of September and October, 2020 and further, the membership of 561 remains freed from union dues deductions.

Further, no union dues have been deducted for the 561 members for the months of September and October which the claimants suspects is an intension of the Respondent to cripple and ground the union.

The Claimant further stands the following other basis for his case;

8. THAT, there is Legal Notice No.160 of 2018 from the Cabinet Secretary for labour ordering employers of the union members to deduct and remit union dues as specified in the Legal Notice hence the action by the Respondents is illegal ab initio. The legal notice states inter alia that;

IN EXERCISE of the powers conferred by section 48 of the Labour Relations, 2007, the Cabinet Secretary for Labour and Social Protection makes the following order-

3. This Order may be cited as the Kenya National Union of Nurses Deduction of Union dues Order, 2018.

4. An employer who employs more than five employees belonging to the Kenya National Union of Nurses shall-

(b) deduct, on a monthly basis, the sum specified in the schedule in respect of trade union dues from the wages of an employee who is a member the Kenya National Union of Nurses...

She prays as follows;

1. An ORDER be and is hereby issued directing the Respondents to resume deduction and remittance of Union dues as specified in the Legal Notice No.160 of 2018.

2. An ORDER be and is hereby issued directing the Respondents to immediately pay the Applicant an amount of Kshs.682,511.00 for the months of September and October, 2020, being the undeducted Trade Union dues and any other subsequent months of Failure to deduct from their own kitty.

3. THAT, any other order that the court deems fit to grant.

4. THAT, the costs of this suit be provided for.

The Respondent's case is that the 1st Respondent has not ignored, refused or neglected to effect deductions as ordered by this court on 24th November, 2020. This is as follows;

4. THAT at the time the court order was served upon us on 3rd December 2020, the Administration and Public Service Department of the County Government had closed the November, 2020 payroll and as such the order for remission of union dues could not be effected.

5. THAT further vide a press statement dated 14th January 2021 the National Treasury and planning issued a notice confirming delay in disbursement of funds to devolved units for the 2020/2021 financial year which press statement is annexed herein and marked as "JNN-1".

This matter took a protracted conciliation process with a view to seeking a settlement of the issue in dispute. To no avail.

The issues for determination therefore are;

1. Whether there is a case for deduction and remission of union dues to the claimant?
2. What is the timing of non-deduction of union dues by the Respondent?
3. Whether the Respondent should pay the trade union dues not deducted from the claimant's members?
4. Is the claimant entitled to the relief sought?
5. Who bears the costs of this cause?

The 1st issue for determination is whether there is a case for deduction and remission of union dues to the claimant. This is not disputed. The parties mutually agree that this should be the situation. However, the Respondents excuses non-deduction on administrative issues touching on the IPPD which they submit is without their jurisdiction. Its provision and installation is the province of the national treasury. This settles this issue for determination.

The 2nd issue for determination is the timing of non-deduction of union dues by the Respondent. This again is not in dispute. The parties agree that union dues deductions were stopped in the month of september 2020 and this continues todate.

The 3rd issue for determination is whether the Respondent should pay the trade union dues not deducted from the claimant's members. This is the bone of contention. The claimant in her written submissions dated 25th May, 2020 submits a case of all non-deducted amounts being met out of the Respondents purse. The Respondent disagrees.

We have to go by the history of this matter. This court engaged the parties in dialogue with a view to resolving the issue at the earliest stage of the dispute. Thankfully, counsel for the Respondents was very positive in pursuing an end and eventual resolution of this undeserving stalemate. This was not to be. This is why we are where we are.

I find that the claimant is entitled to union dues, their statutory entitlement from day one. The union was not party to non-deductions. This stoppage was occasioned by the lethargy of the Respondent. This even at the risk of grounding the union. This court takes cognizance that this is a poor industrial relations, practice *inter partes* and should be frowned against. It is not tenable for industrial peace and harmony. This answers the 3rd issue for determination.

The 4th issue for determination is whether the claimant entitled to the relief sought. She obviously is. The circumstances of this case establish a clear win for the claimant. She becomes entitled for the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- i) That the Respondent be and are hereby ordered to remit all amounts of union dues with effect from 1st September, 2020 to the date of final payment to the claimant union.
- ii) That the amounts of undeducted union dues fall and shall be payable from the Respondents purse and kitty.
- iii) That the Respondents be and are hereby ordered to forthwith resume union dues deductions and remissions to the claimant.
- iv) That the Commissioner of Labour be and is hereby ordered to, with the involvement of the parties, compute all amounts due and payable to the claimant in thirty (30) days.
- v) That the involvement of the Commissioner of Labour shall only arise in the event of a stalemate *inter partes* within a week of this judgment of court.
- vi) Mention on 15th December, 2021 for a report on compliance.
- vii) The costs of this claim shall be borne by the Respondents.

Dated and delivered at Nyeri this 19th day of July, 2021.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr.Kinoti for the Claimant Union.
2. Mr. Wamwea instructed by Oyomba Mosota & Wamwea Advocates for the Respondents.