



**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**

**<sup>st</sup> RESPONDENT**

**BUSIA COUNTY PUBLIC SERVICE BOARD**

**2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

1. The Kenya National Union of Nurses (the Union) sued the County Government of Busia (the County Government) and the County Public Service Board (the Board) on 2 October 2020, and it stated the Issue in Dispute as:

- (i) Unfair labour practices by the Respondents.
- (ii) Refusal by the Respondents to deduct and remit union dues from members of the Claimant.

2. The Union sought the following remedies:

- (i) An order be and is hereby issued quashing 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.
- (ii) 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.
- (iii) An order be and is hereby issued directing the Respondents to immediately pay the applicant an amount of Kshs 513,147/- for August and September 2020, being the undeducted trade union dues and any other subsequent months of failure to deduct from their own funds.
- (iv) THAT any other order that the Court deems fit to grant.
- (v) THAT the costs of this suit be provided for.

3. Filed at the same time was a Motion which the Court dealt with and delivered a Ruling on 3 February 2021.

4. The Respondents filed a Response to the Statement of Claim on 9 November 2020, and on 13 May 2021, the Union proposed that the Cause be determined on the basis of the record and submissions to be filed.

5. The Union filed its submissions on 22 July 2021 (should have been filed and served on or before 13 June 2021) while the Respondents filed their submissions on 7 September 2021 (should have been filed and served on or before 13 July 2021).

6. The Union identified 3 Issues in its submissions:

- (i) Whether the letter dated 14 August 2020 by the Respondents directing stoppage of deduction of trade union dues from the wages of members of the Claimant should be quashed?
- (ii) Whether the Respondents should pay trade union dues, they refused to deduct from August 2020 to date from their own funds/public resources?

(iii) Who should pay the costs of the suit?

7. The Court has considered the record and submissions.

8. While giving the directions, the Court cautioned the parties of the risks of proceeding on the basis of the record and submissions.

#### **Unilateral stoppage of deduction of trade union subscriptions**

9. There is evidence in the form of a letter dated 14 August 2020, from the County Secretary and addressed to several trade unions, including the Claimant Union herein.

10. The letter admits that the County Government had been deducting and remitting union subscriptions from its employees who had joined the Union.

11. The Respondents also indicated that they were aware of 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.

12. Under 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. The provision requires that any permission for variation or revocation must be given by the Cabinet Secretary, Labour.

13. The decision of the Respondents signified through the letter of 14 August 2020, in the Court's view, was a direct assault on the constitutional rights of employees as individuals to associate and the Union to organise.

14. The decision was abhorrent to our constitutional democracy as an employee is free to dispose of his wages in any lawful manner s/he so wishes.

15. The Court finds the decision of the Respondents was a well 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.

#### **Payment of Union subscriptions from Respondents resources**

16. The Union did not prove or disclose how many of the employees of the Respondent had joined its rank to warrant an order compelling the Respondents to make good from their own sources, union dues from August 2020.

#### **Conclusion and Orders**

17. From the foregoing and in the circumstances, the remedy commending itself to the Court is to order that:

(i) The Union to furnish the Respondents with details of its members in their employment within 7 days.

(ii) An order be and is hereby issued directing the Respondents to resume within 30 days from today, deduction and remittance of union subscriptions as specified in the Legal Notice No. 160 of 2018 upon receipt of the membership list in (i) above.

18. Because of social partnership between the parties, each to bear own costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 6TH DAY OF OCTOBER 2021.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

#### **Appearances**

For the Union Mr Mwendwa, Industrial Relations Officer

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

Court Assistant Chrispo Aura