



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. E067 OF 2021

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

NYABONDO MISSION HOSPITAL.....RESPONDENT

RULING

1. By a Notice of Motion dated 29th September, 2021, the Applicant herein, Kenya National Union of Nurses, seeks the following orders:

i. Spent

ii. That pending the hearing and determination of the application and the main suit, an order be issued directing the Respondent to commence deduction and remittance of Union dues from the members of the Applicant as submitted in *Form 'S'* and as directed by the Minister for Labour vide Legal Notice No. 161 of 2021.

iii. That pending the hearing and determination of the application and the main suit this Honourable court be pleased to issue interim orders of injunction restraining the Respondent by itself, its directors, servants, managers, agents, assigns and/or anybody acting in its name from victimizing, intimidating, dismissing any of its nurses for reasons related to this matter or for their membership to the Applicant's Union.

iv. That this application be merged with the main suit and heard by way of documentations and written submissions in accordance with Rule 21 of the Employment and Labour Relations Court Rules, 2016.

v. That this court be pleased to grant any other orders it may deem fit and just to meet the ends of justice.

vi. That costs be in the cause.

2. According to the Applicant, between November, 2020 and February, 2021, it recruited 29 nurses to its membership and who are employees of the Respondent herein.

3. The Applicant avers that on various dates from the 7th December, 2020 to 16th February, 2021, it submitted to the Respondent, being the Employer, copies of forms dully signed by the nurses with details of the amount to be deducted by the Respondent as the nurses' Union dues for remittance to the Applicant, together with the Bank accounts into which the dues should be remitted.

4. The Applicant asserts that earlier on 19th November, 2020, they wrote to the Respondent informing her of the nurses under its employ who had joined the Applicant's Union and further bringing to their attention the issue of deduction of Union dues.

5. The Applicant avers that later on the 23rd November, 2020, they wrote to the Respondent, seeking to have a meeting with them to update members on recruitment, election of leaders as well as signing of a recognition agreement, which request, the Respondent declined.

6. The Applicant avers that it has recruited 29 members from the employ of the Respondent and as such, has attained a simple majority and is deserving of recognition by the Respondent. The Applicant's further case, is that the Respondent has refused to sign a recognition agreement with them and that despite various correspondences with the Respondent, it has refused to deduct and remit Union dues to the Applicant.

7. The Applicant avers that the Respondent has refused to recognize it for purposes of a collective bargaining despite attaining a simple majority.

8. The Applicant avers that on 12th February, 2021, the Applicant reported a trade dispute to the Minister of Labour and Social Protection in accordance with Section 62 of Labour Relations Act. The Applicant states that the Minister appointed a conciliator, one Mr. Charles Gondosio on 11th March, 2021.

9. The Applicant further avers that the conciliator resolved the dispute between the parties herein and a conciliation report issued on 28th April, 2021. The Applicant avers that the report recommended that the parties herein meet and sign a Recognition agreement, but which recommendation, the Respondent failed to adhere to resulting in the filing of this suit.

10. The Applicant asserts that the Respondent has violated *Sections 48 of the Labour Relations Act and Section 19 (1)(g) of the Employment Act*.

11. The Respondent did not oppose the application.

12. I have considered the issues raised in this application.

13. Section 48 of the Labour Relations Act, 2007 provides as follows in respect of deduction of Trade Union dues:

“(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 of 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—

(i) into a specified account of the trade Union; or

(ii) in specified proportions into specified accounts of a trade Union and a federation of trade Unions.

(3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade Union dues from an employee’s wages within thirty days of the trade Union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.

14. The conditions that a Union must meet for an employer to deduct Union dues from its employees’ salaries, are clearly enumerated in *Section 48 of the Labour Relations Act* as listed above. The issue for this court to determine, is whether the Applicant herein has met the threshold for deduction of Union dues.

15. The first requirement is for the Union to get a ministerial order authorizing it to request an employer to deduct Union dues. The Applicant herein has produced the ministerial order being *Legal Notice No.161 of 2021* by which the Minister for Labour had authorised the deduction of Union dues on behalf of the Applicant.

16. The second requirement is for the Trade Union to serve notice in *Form S* as stipulated under the Third Schedule to the Act and which should be signed by the employees in respect of whom the employer is required to make a deduction. The Applicant produced exhibit marked KNU 3, being *Form S* in fulfilment of this legal requirement. The Court of Appeal in the case of **Banking Insurance Finance Union(K) v. Kenya Revenue Authority [2018] eKLR**, held that the proof of membership to a Union is submission of check-off forms duly signed by the concerned employees.

17. The Respondent’s employees subject of this application, have neither denied joining the Applicant’s Union nor withheld their consent for deduction of the Union dues.

18. It is evident to this court that the Applicant has met the threshold for the deduction of Union dues by the Respondent. The Respondent is duty bound under the law to deduct Union dues and remit the same to the Applicant. This was the holding of the court in the case of **Kenya Union of Hair and Beauty Salon Workers v Styled Industries Ltd and Another [2020] eKLR**, where the court held that an employer should deduct Union dues from employees who have signed the check-off forms once the same have been served upon the employer.

19. The court finds the Applicant’s application merited and is hereby allowed as follows:

i. That an order be and is hereby issued directing the Respondent to commence deduction and remittance of Union dues from the members of the Applicant as submitted in *Form ‘S’* and as authorized by the Minister for Labour vide *Legal Notice No. 161 of 2021*.

ii. That orders of injunction are hereby issued restraining the Respondent by itself, its directors, servants, managers, agents, assigns and/or anybody acting in its name from victimizing, intimidating, dismissing any of its nurses for reasons related to this matter or for their membership to the Applicant’s Union.

iii. That the costs of the application shall be in the cause.

iv. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 25TH DAY OF NOVEMBER, 2021.

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Wanjiku present for the Claimant

N/A for the Respondent

MS. Christine Omollo – C/A