



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 759 OF 2018

KENYA UNION OF ENTERTAINMENT & MUSIC INDUSTRY EMPLOYEES.....CLAIMANT

VERSUS

MULTI MEDIA UNIVERSITY OF KENYA.....RESPONDENT

RULING

1. By a judgment delivered on 1st November 2019, **Ongaya J** issued the following orders:

- a. The Respondent to continue deducting and remitting the union dues on monthly basis for its staff being members of the Claimant Union;
- b. The parties to conclude the Recognition Agreement by 15th December 2019 to pave way for negotiation of the relevant Collective Bargaining Agreement (CBA).

2. By its Notice of Motion brought under Certificate of Urgency dated 2nd July 2021, the Claimant Union accuses the Respondent of failing to comply with the foregoing orders and therefore seeks the following:

- a. An order directing the Respondent's Vice Chancellor, Prof. Festus Kaberia to appear in court to show cause why he should not be committed to civil jail for contempt of court and in default, the OCS of Ongata Rongai Police Station be directed to arrest and produce him in court;
- b. An order directing the Respondent to pay Kshs. 1,729,800 less any amount paid on account of the Claimant Union dues of Kshs. 432,450 to COTU from its own sources and continue deduction and payment of Kshs. 54,800 to the Claimant and Kshs. 13,450 to COTU monthly and in default, the Claimant be at liberty to execute;
- c. That the costs of the application be met by the Respondent.

3. The Motion is supported by an affidavit sworn by the Claimant's General Secretary, Job W. Mucuha and is based on the following grounds:

- a. That the Court delivered judgment on 1st November 2019 directing the parties to sign a Recognition Agreement not later than 15th December 2019 and continue with deduction and remittance of union dues to the Claimant;
- b. That the Respondent moved the Court for stay of execution of the judgment pending appeal, which was granted by a ruling delivered on 19th December 2019 on two conditions, one being that the appeal be filed on or before 1st March 2020;
- c. That on 20th February 2020, the Respondent's Counsel wrote to the Claimant stating that the Respondent did not intend to pursue the appeal;
- d. That the Respondent filed a Notice of Withdrawal of the Appeal on 2nd March 2020;
- e. That on 21st January 2020, the Claimant re-forwarded Form 'S' on account of 77 additional members making a total of 93 employees, who were members of the Union;

- f. That in the month of December 2019, the Respondent stopped deducting union dues on account of 30 employees;
- g. That in the month of April 2019, the Respondent wrote to the Claimant forwarding printouts on union dues deduction, after the Claimant had queried the manner in which deductions were being made;
- h. That after the judgment, the Claimant approached the Respondent by re-forwarding the check off forms (Form 'S') as well as a Recognition Agreement but the Respondent declined to comply;
- i. That the Respondent has never remitted any COTU dues hence the figure of Kshs. 432,450 being Kshs. 150 per employee every month for 31 months and Kshs. 1,729,800 less any remitted dues to the Claimant based on the minimum amount as per the Gazette Notice being Kshs. 600 per member for 31 months;
- j. That it is only fair that the Respondent's Vice Chancellor be committed to civil jail and maximum fine be imposed to protect the integrity of the Court and the rule of law;
- k. That if the orders sought are not granted, the Claimant and its members shall suffer irreparable damage.

4. The Respondent's response to the application is by way of a Replying Affidavit sworn by its Vice-Chancellor, Prof. Festus Kaberia on 6th October 2021.

5. Prof. Kaberia depones that the Notice of Withdrawal of Appeal dated 20th February 2020 was in no way concerned with the judgment delivered on 1st November 2019 but rather, was with respect to an appeal against the ruling and orders issued on 30th July 2018.

6. Prof. Kaberia further depones that the Respondent's Advocates had written to the Court severally, requesting for typed proceedings in order to enable them file a substantive appeal. He adds that the typed proceedings had not been supplied.

7. According to Prof. Kaberia, the Respondent has been making deductions as directed by the Court, as evidenced by the schedule of deductions prepared by the Human Resource Department of the Respondent.

8. He states that as at the month of September 2021, only eight (8) temporary employees were engaged by the Respondent.

9. The Respondent's opposition to the Claimant's application is two pronged; first, that it had not withdrawn its appeal against the judgment dated 1st November 2019 but had been prevented from progressing the appeal by failure by the Court to issue typed proceedings and second, that it had in fact been deducting and remitting union dues as directed by the Court.

10. The Court was referred to email communication from the Respondent's Advocates to the Deputy Registrar of the Court asking for typed proceedings, judgment and decree to enable them file the appeal.

11. A perusal of the court record shows that the proceedings were typed but there is no record of communication to the Respondent's Advocates in this regard. The Court will therefore give the benefit of doubt to the Respondent and find that the Respondent may have been prevented from filing its appeal within the prescribed time by inaction from the Court.

12. Regarding deduction and remittance of union dues, the Respondent produced its own internal documents showing deductions made but did not adduce any evidence to show remittance of these dues to the Claimant. On its part, the Claimant states that it had not received any union dues from the Respondent since December 2019.

13. I therefore direct that the Respondent's Vice Chancellor, Prof. Festus Kaberia shall appear **in person before this Court, on 11th November 2021 at 11.00 am**, to produce documents showing remittance of union dues to the Claimant Union.

14. The Respondent will pay the costs of this application.

15. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY NOVEMBER, 2021

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JUDGE

Appearance:

Mr. Mucuha (Union Representative) for the Claimant

Mr. Chege for the Respondent