



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 388 OF 2018

(Formerly Nairobi ELRC Cause No. 1277 of 2018)

(Before Hon. Justice Mathews N. Nduma)

KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS.....CLAIMANT

VERSUS

WEST KENYA SUGAR COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The issue in dispute is refusal by the respondent to effect the check-off system in respect of employees on fixed term contracts and those termed casuals. It is not in dispute that the parties have a Recognition Agreement in place dated 18th February 2007.

2. The claimant union has established that it recruited all the named employees in the check-off list, as its members. The only reason for refusal by the respondent to deduct union dues is that it only deducts union dues in respect of permanent employees.

3. The court relies on the decision by Rika J. in Tailors and textile workers union vs Ashton Aparels (EPZ) Limited (2015) eKLR in which the judge stated;

“The respondent explained this stating that many employees were on fixed term contracts. Trade unions dues must be remitted, irrespective of whether employees are on fixed term contracts”

4. This court will go further and add that any person who is an employee in terms of *Section 37 of the Employment Act, 2007* by fact of the length of period the employee has served and continues to serve the employer is unionisable.

5. Clearly, all the named employees in the check-off list submitted by the claimant to the respondent are employees who have served for continuous period of more than one month as provided under *Section 37(1) (a)* and the work they do is not reasonably expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more.

6. Failure by the respondent to deduct union dues in respect of all employees in its employ who comprise the check-off list is a violation of *Section 5(2) of the Labour Relations Act, No. 14 of 2007* which provides;

“Without limiting the general protection conferred by sub-section (1), no person shall do, or threaten to do any of the following:

(a) Prevent an employee or a person seeking employment not to be or become a member of a trade union or to give up membership of a trade union”

7. The claimant has proved on a balance of probabilities that all the listed employees are its members and the respondent is prohibited from imposing any restrictions on them to join the union regardless of whether the employees are on a fixed term contract or were first employed on casual basis provided they have now converted to continuous or regular employees by virtue of *Section 37(1) of the Employment Act*.

8. Accordingly, the respondent is directed to:

(a) Immediately effect deduction of union dues from the wage/salaries of all the listed workers still in its employ who have voluntarily become members of the union.

(b) The respondent to pay the costs of the suit.

Judgment Dated, Signed and delivered this 30th day of January , 2020

Mathews N. Nduma

Judge

Appearances

Mr. Jeremiah Akhonya for Claimant union.

Mr. Dickens Ouma for the Respondent

Chrispo – Court Clerk