



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 302 OF 2018**

**(Before Hon. Justice Mathews N. Nduma)**

**KENYA QUARRY AND MINE WORKERS UNION.....CLAIMANT**

**VERSUS**

**RAI CEMENT LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit was filed by the claimant union on 28<sup>th</sup> June 2018 praying for an order in the following terms:
  - a. That the respondent remit dues of 96 employees who were in the check-off system forms.
  - b. That respondent pay union dues as from 1<sup>st</sup> September 2017 as promised by the Human Resource Manager in his letter dated 20<sup>th</sup> September 2017.
  - c. That respondent allow employees to enjoy their freedom of association.
  - d. Costs of the suit
2. The respondent filed a reply to the memorandum of claim denying that the claimant had recruited 96 employees who are in its payroll since they were employees of an independent contractor outsourced by the respondent and that respondent would adduce evidence to that effect. The respondent further denied having received the check-off forms on 31<sup>st</sup> July 2017. The respondent prays the suit be dismissed with costs.
3. The claimant union relies on the statement of claim, list of documents annexed thereto and written submissions.
4. The respondent called RW1 Felix Kipchumba who testified under oath that he was the Personnel Manager of the respondent. He relied on a witness statement filed on 1<sup>st</sup> August 2018. He testified that the respondent outsourced workers in terms of the contracts filed in court. That the respondent was given a list of 96 workers by the claimant union but only one employee was directly employed by the respondent. That the respondent therefore deducted union dues for only one employee. That some of the employees denounced recruitment. RW1 testified that there was a rival union at the time, namely Kenya Chemical Workers Union and demarcation needed to be done.
5. That the dispute was reported to labour and after conciliation, the labour officer recommended deductions to be done in respect of 23 members of the claimant and the respondent complied with the recommendation. That the respondent deducted union dues and remitted the money to the claimant union. RW1 testified that they are ready and willing to continue deducting and remitting union dues from employees who join the claimant union.
6. RW1 attached letters of employees who denounced membership of the claimant union marked exhibits '1' to '3'. RW1 prayed the suit be dismissed.
7. Under cross examination, RW1 stated that the respondent started outsourcing labour in 2018 as evidenced by the documents before court. RW1 also insisted that some employees had voluntarily denounced membership to the union as per the attached letters.
8. RW1 denied any involvement in getting the workers to denounce membership.

9. RW1 contradicted his earlier testimony that they had deducted dues from 23 employees after conciliation and said they had only deducted from one employee.

10. RW1 stated that respondent started operations in 2017. That they were new in the market and needed to outsource labour to survive. RW1 prays the suit be dismissed with costs.

### **Determination**

11. The issues for determination are:

- a. Whether the claimant had proved that it had recruited 96 employees as its members.
- b. Whether the respondent was obliged to deduct and remit union dues in respect of the said 96 employees.

12. From the documentary evidence before court, the claimant union wrote to the respondent on 31<sup>st</sup> July 2017 requesting the respondent to deduct union dues from 96 employees whose names were in the attached check-off list. The letter was copied to the Ministry of Labour and COTU. A reminder was written to the Human Resource Manager by the National General Secretary on 8<sup>th</sup> September 2017.

13. On 20<sup>th</sup> September 2017, Mr. James Wachira, Personnel Manager wrote to the claimant union confirming receipt of the letter dated 8<sup>th</sup> September 2017 and stated thus:

“We have gone through the attached list and established that they have been working for us except for one who was a student on attachment and five others who were not in employment by the date they signed the list”

14. The Personnel Manager ended the letter stating

“We have no other hidden reason whatsoever as to why we have not responded to you, but we ensure you that we are working on the deductions in the September wages”

15. On 19<sup>th</sup> January 2018, the union reported a trade dispute to the Ministry of Labour for failure by the respondent to deduct union dues and remit the same to the claimant union and victimization of unionized employees.

16. By a letter dated 16<sup>th</sup> May 2018, Mrs. E.N. Gicheha, Registrar of Trade Unions wrote to the respondent advising the respondent to comply with the request by the claimant union since under Section 48 of the Labour Relations Act, the respondent was obliged to commence deducting union dues from employees' wages within 30 days of the trade union serving a notice signed by the employees.

17. The ministry proceeded to conciliate the dispute and made its findings and recommendations to the parties in a report dated 22<sup>nd</sup> May 2018 which is before court.

18. In terms of the report, having considered the submissions by the parties the conciliator R.A.O. Litaba found and recommended that the respondent was bound to deduct union dues from all the workers who had signed the claimant union check-off forms submitted to the respondent except in respect of employees who had signed two check-off forms from the two rival unions. The conciliator recommended that deductions be effected from the 5<sup>th</sup> June 2018.

19. From the oral and documentary evidence before court, the court is of the considered finding that the claimant union had recruited at least 91 employees of the respondent as its members. Provided that the said employees were on the payroll of the respondent, the respondent was bound under section 48 of the Labour Relations Act and Articles 36 and 41 of the constitution of Kenya 2010 to commence deductions of the union dues from its payroll in respect of all the employees who had signed the check-off list.

20. We have stated before and reiterate that it is not the business of an employer to second guess the check-off list submitted to it by a union that is lawfully registered to operate in the sector the respondent operates in.

21. Matters of union rivalry are not in the purview of the employer. It is for the rival unions to resolve them independent of the employer.

22. The respondent is bound to respect freedom of association of all its employees and it has a right to recognize the union with majority of the employees as its members.

23. This is not a recognition dispute but only deals with the obligation by an employer to deduct and remit union dues in respect of its employees who have freely and voluntarily joined the claimant union without any undue interference with the freedom of employees to select which union they wish to be members of.

24. Accordingly, the court finds that the respondent is bound to immediately deduct and remit union dues in respect of all employees whose names are in the submitted check-off list who are in its payroll. The court is not satisfied that the employees in the said list are not employees of the respondent. The letter by the personnel Manager confirms that indeed the employees are employees of the respondent and that the respondent was ready and willing to effect the check-off list deductions.

25. In the final analysis judgment is made in favour of the claimant union as against the respondent and makes the following orders:

- a. The respondent to deduct and remit union dues from the 91 employees in the check-off list (less six) as per evidence of RW1 provided the employees are in the respondent's payroll from the date of this judgment.
- b. The issue of any arrear union dues to be resolved by the claimant union and its membership and advise the respondent on the payment of any union dues payable in arrears. The communication from the union in this respect is binding on the respondent.
- c. The respondent to pay the costs of the suit.

**Judgment Dated, Signed and delivered this 20<sup>th</sup> day of February, 2020**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Jemo for the Claimant union.

Mr. Getanda for the Respondent

Chrispo – Court Clerk