



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 6709 OF 2019

**KENYA UNION OF COMMERCIAL, FOOD AND
ALLIED WORKERS.....CLAIMANT**

-VERSUS-

PONDERS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 13th March, 2020)

JUDGMENT

The claimant filed the memorandum of claim on 24.10.2019 through its Secretary General. The claimant prayed for judgment against the respondent for:

- a. A declaration that the respondent's action is unfair and unlawful.
- b. The respondent to pay out of its resources Kshs.24,000.00 per month for the period union dues have not been deducted and remitted.
- c. A permanent order restraining the respondent from intimidating, victimising, coercing and disciplining and terminating the services of any of its employees on account of active participation in trade union activities.
- d. The respondent to effect deduction of trade union dues and remit to the claimant within the provisions of section 48 of the Labour Relations Act.
- e. An order directing the respondent to sign recognition agreement within 7 days and negotiate and conclude a collective bargaining agreement within 30 days from the date of the judgment.
- f. Any other order the Honourable Court deems fit to address the cause of action.

The respondent filed the response to the claim on 27.11.2019 through J.M. Onyanja and Company Advocates. The respondent further filed the replying affidavit of Supriya Guptan, its Imports and Logistics Manager. The respondent's case is as follows:

- a. It had no knowledge that the claimant had recruited its employees.
- b. The claimant forged the employees' signatures to advance its claims.
- c. The claimant's employees have already joined Kenya Scientific Research International Technical and Institutions Workers Union where union dues are remitted. The respondent and that union signed a recognition agreement on 15.06.2019.

The parties recorded a consent that the suit be determined on the basis of the pleadings and documents filed for the parties.

To answer the **1st issue** for determination, there is no dispute that the claimant is the sector trade union for representation of the respondent's employees who are eligible to join a trade union as per section 54 of the Labour Relations Act, 2007. While stating that it has signed a recognition agreement with another union, no pleadings or evidence has been provided for the respondent to suggest that the claimant is not the sector union.

To answer the **2nd issue** for determination, the Court finds that the claimant has met the threshold for recognition by the respondent by recruiting a simple majority of the respondent's workers eligible to join the union. The Court observes that the matter had gone for statutory conciliation where the parties presented their respective cases. The conciliator having considered the list of workers as recruited by the claimant against the respondent's master payroll, the conciliator found, **"On production by both parties to the conciliator the union check-off list and management's Master Payroll the conciliator was able to determine that the union had recruited 36 unionisable employees of Ponders Limited out of a total of 53 which translates to 67%."** The parties have not rebutted that finding by the conciliator and the Court upholds the finding. The respondent urges that some of the recruited members have since left the union by resignation or withdrawal of union membership. The Court finds that such withdrawal, if any and established, does not in any manner impair the claimant's acquired threshold for recognition as found by the conciliator. The Court finds that the claimant is entitled to enter a recognition agreement with the claimant as per the provisions of the Labour Relations Act, 2007. Further, the respondent has provided no evidence to show that the signatures of the employees were forged by the claimant in recruiting the employees. The Court further considers that such alleged forgery is clearly inconsistent with the respondent's position that some employees who had joined the union have since withdrawn membership as per exhibited notices of withdrawal.

To answer the **3rd issue**, the Court returns that the claimant is entitled to deduction and remission of union dues as provided for in the Labour Relations Act, 2007 and in particular, section 48 thereof. The claimant is entitled to continued deduction and remission of union dues. While making that finding, the Court further considers that section 48(6) is clear that an employer may not deduct union dues from an employee who has notified the employer in writing that the employee has resigned from the union. The parties are guided accordingly.

The Court has considered the claimant's submission that under section 19(1) (f) of the Employment Act, 2007 the respondent was obligated to deduct union dues as obligated under the Labour Relations Act, 2007 and the check off forms were served on 18.03.2018 and on 17.09.2018 so that the respondent is liable to remit the union dues accordingly and from that time. The Court returns that as for the effective date for remitting the union dues, on 14.11.2019 the Court ordered thus, **"1.(a) Pending the inter-parties hearing or further orders by the Court the respondent to deduct and remit the union dues beginning end of November 2019 with respect to its employees being members of the claimant who have signed Form S and duly served upon the respondent."** The Court returns that the interim order defined the effective date for the deduction and remission of union dues and the terms of the order applied pending the judgment. In any event the claimant did not particularise the claim and being a liquidated claim, it ought to have been specifically pleaded and then proved strictly. The Court considers that the claimant is entitled to an order that the respondent continues to deduct and remit union dues for the respondent's unionisable employees who have joined the claimant as signified by service of the relevant Form S signed by the employees.

It is law that under Article 41 and provisions of the Labour Relations Act, 2007 the unionisable employees are entitled to peaceful enjoyment of participation in lawful activities of the claimant and to union membership. A declaration will issue accordingly and in line with the claimant's prayers.

As the suit flows from a trade dispute the Court returns that each party shall bear own costs of the suit towards fostering peaceful industrial relationship between the parties.

In conclusion judgment is hereby entered for the claimant against the respondent for:

1. The declaration that the denial of the claimant by the respondent of deduction and remission of union dues, recognition and negotiation of the collective agreement was unfair and unlawful.
2. The respondent to continue deducting and remitting union dues to the claimant on monthly basis with respect to its unionisable employees who have joined or will join the claimant as signified by duly signed Form S signed by the employee and served upon the respondent by the claimant.
3. A declaration that the respondent by law is prohibited by itself or by its directors, officers, employees or agents from intimidating, victimising, coercing and disciplining or terminating the services of any of its employees on account of lawful active participation in trade union activities or membership.
4. The parties to sign a recognition agreement within 60 days and negotiate and conclude a collective bargaining agreement within 90 days from the date of this judgment.
5. Each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday, 13th March, 2020.

BYRAM ONGAYA

JUDGE