



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2204 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 28th July, 2020)

KENYA AVIATION WORKERS UNION.....CLAIMANT

VERSUS

KENYA AIRPORTS AUTHORITY.....RESPONDENT

RULING

1. Before this Court is the Claimant's Application dated 20/4/2020 seeking the following reliefs:-

a. Spent.

b. THAT the Honourable Court be pleased to grant the Applicant an order directed to the Respondent the Kenya Airports Authority to remit and/or release to the ex parte Applicant the sum of Kshs. 38,669,171.20 in respect of the already deducted union dues payable to the union in compliance with Sections 48 and 49 of the Labour Relations Act to the Applicant union.

c. THAT the Honourable Court to issue a further order directed to the Respondent to effect deduction of union dues for union members in Grade S5 with effect from January 2020 and on every subsequent month and remit the same to the Applicant union.

d. THAT the Honourable Court be pleased to condemn the Respondent Kenya Airports Authority to pay the costs of these proceedings.

2. The Application is supported by the grounds set out therein and the Supporting Affidavit of Moss Ndiema sworn on 20/4/2020 together with his Supplementary Affidavit sworn on 4/6/2020.

3. The Application has been opposed vide the Replying Affidavit of Anthony Njagi sworn on 19/5/2020, on the Respondent's behalf.

The Applicant's Case

4. The Applicant avers that the Respondent has deducted the sum of Kshs. 38,669,171.20 from its members from Grade S1 to S5 from January 2016 to December 2019 and failed to remit to the ex parte Applicant, contrary to the requirements of Sections 48 and 49 of the Labour Relations Act and the Court Order issued on 6/9/2016 and despite a formal demand of the same. It is further averred that the Respondent has also stopped the deduction and remittance of unions from January 2020.

5. The Applicant avers that the non-remittance has greatly hampered the Union's operations, which relies on the funds deducted from its members to perform its functions for the interest of members. The Applicant further avers that they are apprehensive that the said amount withheld by the Respondent may be diverted to other uses.

6. It is averred that the Respondent has no justifiable reason to withhold union dues or decline to deduct the same and the continued non-deduction will continue to hamper the Applicant's operations. As such, the orders sought compelling the Respondent to remit the same, should be granted.

The Respondent's Case

7. The Respondent avers that the amount sought for the said period was inadvertently deducted from its employees' salaries. Thereafter, the

affected employees in job Grade S5 lodged protest letters indicating that they had never been union members hence the deductions had been made without a lawful basis.

8. It is averred that employees who had disputed union membership were reimbursed after the Respondent had verified their claims and only 13 employees who had not renounced their union membership, remained. The Respondent avers that the Applicant is aware of this fact and contends that remitting the monies sought would be irregular and unlawful.

9. The Respondent contends that they have consistently remitted union dues for all employees under job grade S1-S5 who had duly signed up as members of the Claimant. The Respondent further contends that schedule produced by the Applicant as MN2 merely shows the erroneous deductions of non-members under the said job group.

10. The Respondent avers that the issue of remittance of union dues for the Respondent's employees of job grade S5 was settled in the Ruling delivered on 23/10/2018 and any new suit filed to address the same issues or with substantive similar issues are barred by the doctrine of *res judicata* and estoppel.

11. It is the Respondent's position that this application seeks to invite this Court to revisit its earlier ruling that the Respondent could only deduct union dues for employees under Job Group S5 who were members of the Claimant.

12. The Respondent contends that the activities of the Claimant have not been hampered and are proceeding normally and in any event avers that they are strangers to anything contrary.

13. Lastly, it is averred that there is no cause of action against the Respondent and it is in the interest of justice that the Application be dismissed as it had already been adjudged on.

The Applicant's Rejoinder

14. The Applicant denies knowledge of the fact that some of their members disputed their membership or that the deductions made were done so erroneously, and deny receiving any protest letters from the Respondent. It is contended that the alleged reimbursement lacks any legal basis since the Applicant's members in job grade 5 have never resigned from the Respondent.

15. The Applicant contends that the Respondent has endeavored to frustrate the efforts of its employees in the said job grade, to freely associate with the Applicant.

16. It is further contended that the Application dated 17/7/2017 was for leave to pursue contempt proceedings hence the instant application is not *res judicata*.

17. The Application was dispensed with by way of oral submissions made on 16/6/2020.

18. Ms. Guserwa, counsel for the Applicant submitted that the Respondent had the duty to remit the union dues having deducted the same in December 2019. She further submitted that the Respondent had written to the Applicant in April 2020 and promised to release the funds but failed to do so. She maintained that the Respondent had no legal basis to refund the union dues they had deducted.

19. Mr. Lusi, counsel for the Respondent submitted that there were similarities between the instant application and that dated 17/7/2017 and was of the position that this Court could not revisit its earlier determination in the ruling delivered on 23/10/2018.

20. Counsel further submitted that it was an undisputed fact that the Respondent had remitted union dues due to the Applicant as evidenced in the bank advice annexed at page 65. It was his position that under Section 48 of the Labour Relations Act, an employer is only required to remit dues of signed up members and it is on this basis that the monies inadvertently deducted were refunded.

21. It was Counsel's submissions that the annexures relied upon by the Applicant were defective and violated Section 9 of the Oath and Statutory Declarations Act as they were not commissioned or marked for identification.

22. In her rejoinder, Ms. Guserwa denied the allegation that the instant application was a duplication of the one dated 17/7/2017 as the latter regarded contempt of Court while the former was for remittance of union dues. It was her position that once an employer deducted union dues, they were supposed to remit. She clarified that this Court had commissioned documents.

23. I have considered the averments of the Parties herein.

24. The Respondents have contended that this application is *res judicata* since it had been resolved through this Court's ruling dated 23/10/2018. They also aver that the moneys deducted from their employees was erroneously deducted and was therefore refunded to the same employees.

25. On 23/10/2018, this Court delivered a ruling in respect of an application dated 17/7/2017. The application of 17/7/2017 was a contempt application emanating from enforcement of the ruling of 6/9/2016 which ruling of 6/9/2016 ordered the Respondents to deduct and remit union dues in respect of employees who had signed check off forms.

26. In the ruling of 23/10/2018, I did not find the Respondents in contempt for the reasons cited therein. The current application seeks orders for remittance of union dues made following the orders of 23/10/2018. The (2) two applications are not one and the same though they

emanate from the same subject matter.

27. The contention by the Respondent that the application is *resjudicata* is therefore not true.

28. As for the contention that the deductions made were made erroneously and have therefore been returned to the employees, I have been shown evidence of some letters written by some employees of the Respondent indicating that they were not members of the union and demanding a refund of the moneys deducted as union dues.

29. The Applicants deny that these letters are valid as no member in job grade 5 resigned from the union. The Applicants also indicated that the letters in question have not been commissioned and are therefore defective.

30. I have considered the fact that indeed there are some letters written by employees of the Respondent indicating that they are not members of the union though the letters are not commissioned. There is also no proof that refunds of moneys paid out was made.

31. The Applicants aver that the Respondent made deductions of union dues from 2016 to 2019 and failed to remit. The letters in respect of which they aver their employees complained of being deducted union dues are dated different dates in 2017, 2019 and 2020.

32. It is however not clear why the Respondents held onto moneys deducted until 2020. This is in clear contravention of Section 48(7) of the Labour Relations Act which envisages that any resignation from a union if at all take effect from the month following the month in which the notice is served on the employer. The notices are also expected to be forwarded to the union. This, the Respondent failed to do.

33. Section 50(1) of the Labour Relations Act also states that:-

“Any amount deducted in accordance with the provisions of this Part shall be paid into the designated trade union, or employers’ organisation account within ten days of the deduction being made”.

34. The Respondent indeed failed to adhere to the law and it is suspect why they now claim to have refunded the dues collected way later after the notice had not taken effect. It is also not clear why they did not pay into the union account the deducted dues within 10 days as envisaged by the law.

35. My finding is that the contention by the Respondent is not supported by evidence and also flouts the provision of the Labour Relations Act. I therefore find the application has merit. I allow it and order the Respondent to pay to the union dues deducted from the union members as prayed.

36. Costs in the application.

Dated and delivered in Chambers via zoom this **28th day of July, 2020.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Olando holding brief Luci- Respondent – Present

Applicant – Absent