



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

*(Before Hon. Lady Justice Maureen Onyango)*

**CAUSE NO. 4 OF 2019**

**THE CATHOLIC UNIVERSITY OF EASTERN AFRICA.....CLAIMANT**

*VERSUS*

**KENYA PRIVATE UNIVERSITIES WORKERS UNION.....RESPONDENT**

**AS CONSOLIDATED WITH CAUSE NO. 239 OF 2019**

**KENYA PRIVATE UNIVERSITIES WORKERS UNION.....CLAIMANT**

*VERSUS*

**THE CATHOLIC UNIVERSITY OF EASTERN AFRICA.....RESPONDENT**

**RULING**

The application before me for determination is dated 11<sup>th</sup> April 2020 and seeks the following orders –

1. Spent.
2. An order of Injunction be issued, and is hereby issues against the Respondent herein, directing the Respondent to release/remitted to the Applicant Union, with immediate effect, all union dues supposedly deducted from members of the Applicant Union from the month of February 2019 to date, and unlawfully withheld.
3. Pending the hearing and determination of this instant application and the main suit, an order of injunction be issued, and is hereby issued against the Respondent, her agents, servants and representatives, directing them to fully implement Form S forwarded to the Respondent herein by the Applicant Union.
4. After the inter-partes hearing, further Orders and Declarations be issued against the Respondent herein, in the following terms:-
  - i) A declaration that the Respondent has blatantly violated Section 48 of the Labour Relations Act 2007 by either refusing to deduct union dues, withholding union dues, or/and by deducting selectively.
  - ii) A declaration that the Respondent has breached Section 50(1), (8) and (10) of the Labour Relations Act, 2007.
  - iii) A declaration that the conduct and continued actions by the Respondent's management constitutes an offence under Section 50(10) and 82(1), (2) and (3) of Labour Relations Act 2007
5. Any other the Court may deem fit to grant for the ends of justice  
to materialize.
6. The costs and incidentals of this application be provided for.

In the memorandum of claim filed with the application and of even date, the claimant seeks the following prayers –

1. A declaration that the Respondent has blatantly violated Section 48(3) and 50(1) of the Labour Relations Act, 2007 by refusing to deduct union dues, withholding union dues.
2. A declaration that the Respondent has breached Section 50(1), (8) and (10) of the Labour Relations Act 2007,
3. A declaration that the conduct and actions by the Respondent's Management constitutes an offence under Section 50 (10) and 82(1), (2) and (3) of Labour Relations Act 2007.
4. A permanent Order of Injunction be issued against the Respondent compelling to implement Sections 48(3) and 50(1) of the Labour Relations Act 2007. ~
5. An Order of Permanent Injunction be issued, and is hereby issues against the Respondent herein, directing the Respondent to release/remit to the Applicant Union, with immediate effect, all union dues supposedly deducted from members of the Applicant Union in the Month of February 2019, and other months, unlawfully withheld.
6. An Order to be issued against the Respondent, direct Respondent's Management to Pay or/and compensate, from their pockets, the Applicant Union all the un-deducted union dues for all Months due for deduction in favour of Claimant Union.
7. Any other order the Court may deem fit to grant for lire or rd-, of justice to materialize.
8. Costs and incidentals of this Application be met by the Respondent.

The prayers as framed are defective. The applicant union appears to have misunderstood the meaning of an injunction.

**Black's Law Dictionary 10<sup>th</sup> Edition** defines injunction as

***“A court order commanding or preventing an action. To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted.”***

In any event, the prayers sought in the application are identical to those sought in the claim. It would therefore be prudent use of scarce judicial time to consider the grounds in the application and then consider the same grounds in the judgment after hearing the parties.

**I thus direct that the issues in the application are consolidated and will be heard together with the claim.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7<sup>TH</sup> DAY OF AUGUST 2020**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**