



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE 890 OF 2019**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 27<sup>th</sup> October, 2020)**

**BANKING INSURANCE**

**& FINANCE UNION (KENYA) .....CLAIMANT**

**VERSUS**

**SMEP MICROFINANCE BANK LIMITED.....RESPONDENT**

**RULING**

1. The Application before Court is the Claimant/Applicant's Notice of Motion dated 10/7/2020, seeking the following orders:-

**1. Spent.**

**2. THAT Symon Kamore, Chief Executive Officer is committed to civil jail for a term, of six (6) months for contempt of court for having deliberately and wilfully disobeyed orders of this Court issued on 28/5/2020.**

**3. THAT the Court do order for immediate deduction of union dues from thirty five (35) members who are alleged to have withdrawn from the union without any proof thereof.**

**4. THAT this Honourable Court be pleased to issue any other or further orders geared towards protecting the dignity and authority of the Court.**

**5. THAT Costs of this Application be provided for.**

2. The application is based on the following grounds:-

**1. On 28/5/2020, this Court issued an order directing the Respondent to henceforth deduct and remit union dues for members who joined the union pending the hearing and determination of the claim.**

**2. The Order was served upon the Respondent's Chief Executive Officer Symon Kamore and that the order was acknowledged by said Chief Executive Officer in a letter dated 19/6/2020.**

**3. The Contemnor's allegation that 35 members withdrew from the union is not supported by any withdrawal form as provided under Section 48 of the Labour Relations Act.**

**4. The contemnor has deliberately and wilfully disobeyed the Court orders and terms issued on 28/5/2020 and his refusal to comply with the order brings the rule of law into ridicule, odium and disrespect.**

3. The application is supported by the affidavit of Isaiah Munoru Mucheke sworn on 10/7/2020. The affiant deposes that there is no contention of the existence of the order as the Respondent acknowledged the same and that the said Contemnor is aware of the said order.

4. The Respondent filed a Replying Affidavit sworn by Rose Chepkemoui Bii, its Head of Human Resource and Administration, on 27/7/2020. The affiant deposes that her Replying Affidavit sworn on 3/2/2020 contains a list of 28 emails of employees who are former members of the Applicant signifying their intent to withdraw from the Union and that 7 more members withdrew from the Union.

5. She deposes that she forwarded the letters/emails to the Applicant as required under Section 48 (8) of the Labour Relations Act. She avers

that Section 48 does not indicate the mode through which a union should be notified by an employer whenever an employee resigns from the Union and that the section only states that an employer shall forward to the Union a copy of any notice of resignation he receives.

6. She deposes that the Respondent cannot be in contempt of court because it discharged its mandate and notified the Union as required under Section 48 (8) of the Labour Relations Act. She avers that the Union cannot demand remittance of union dues in respect of 35 employees who have expressly withdrawn from its membership.

7. The Application proceeded by way of written submissions.

#### **Applicant's submissions**

8. The Applicant submitted that the contemnor had the authority and power to ensure compliance with the Court's order issued on 28/5/2020. It submitted that the Contemnor does not deny existence of the court order and does not comply with the same. It relied on the case of **Teachers Service Commission v Kenya National Union of Teachers & 2 Others [2013] eKLR** where the Court held that the reason why courts punish for contempt is to defend the rule of law, which is fundamental in the administration of justice and has nothing to do with integrity of the judiciary. It further held that a court order is not a mere suggestion or an opinion or a point of view and must be complied with. It further relied on the case of **Board of Governors Moi High School Kabarak v Malcolm Bell & another [2013] eKLR**.

9. It urged the Court to grant the prayers sought.

#### **Respondent's submissions**

10. The Respondent reiterated that Section 48 (8) of the Labour Relations Court does not prescribe the mode through which notification of resignation should be communicated to a Union. It submitted that the union is aware of the employee's resignation from its membership. It argued that any deduction of union dues from these employees amounts to an unfair labour practice under Article 41 of the Constitution and Section 19 of the Employment Act.

11. It relied on the case of **Tailors & Textile Workers Union v Global Apparel EPZ Limited; Fidelis Omwamba Onsingo & 6 Others (Proposed Interested Parties) [2020] eKLR** where the Court held:-

***“The failure by the Respondent to deduct and remit union dues from the Claimant's members save for those who have resigned is therefore in contempt of this Court's orders. I therefore find the Respondent guilty as cited for contempt.”***

12. It submitted that the application is an abuse of the Court process, has been brought in bad faith and completely lacks merit. It therefore urged the Court to dismiss the application with costs to the Respondent.

13. I have examined the averments of the Parties herein. The Applicants contend that the Respondent are guilty of contempt of Court having failed to remit union dues as directed by this Court in its ruling of 28<sup>th</sup> May 2020.

14. The Respondents aver that they have not disobeyed the Court orders in that the remittances could not be made as the union members in respect of whom deductions would have been made withdrew from the union as per the affidavit of 3<sup>rd</sup> February, 2020.

15. In this Court's ruling of 28/5/2020, paragraph (4), I directed that the Respondent had in their response to the application indicated that the union had recruited 78 members out of 170 employees and so had not met the simple majority.

16. At the time, the issue of resignation of 35 members was not brought to this Court's attention. There is also no indication that the Respondent proceeded to remit even the dues for the rest of the members.

17. In the circumstances, it is for true that the Respondents have disobeyed this Court's orders and are therefore in contempt of this Court's orders, and are therefore liable for punishment.

**Dated and delivered in Chambers via zoom this 27<sup>th</sup> day of October, 2020.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Momanyi holding brief Kubai for Claimant – Present

Kilonzo for Respondent – Present