



**REPUBLIC OF KENYA**

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

**AT NAIROBI**

**CAUSE NO. 250 OF 2020**

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

**- VERSUS -**

**KENYA BUILDERS & CONCRETE CO. LTD.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 23<sup>rd</sup> October, 2020)

**JUDGMENT**

The memorandum of claim was filed through Wafula Musamia, National General Secretary. The claimant prays for judgment against the respondent for:

- 1) The respondent to remit agency fees of all employees who benefited from the collective bargaining agreement (CBA) of 2018-2020.
- 2) The respondent to honour the agreement signed and registered by the Employment and Labour Relations Court.
- 3) The respondent to pay costs of the suit plus interest.

The respondent relies on the replying affidavit of Jeremiah Nzioka filed on 09.06.2020 (through Okwach & Company Advocates) to oppose the application filed together with the memorandum of claim and seeking prayers similar to those in the memorandum of claim. The parties consented that the main suit be determined upon the material on record.

There is no dispute that parties are in a recognition agreement and a CBA.

The claimant's case is as follows:

- a) The last CBA expired on 31.05.2018.
- b) On 06.08.2018 the claimant noted that for some non-members the respondent was not deducting agency fees.
- c) On 04.12.2018 the respondent provided a list of employees who benefited from the CBA but were not union members. The claimant forwarded the list to the Minister for labour.
- d) The matter went for conciliation, and the respondent replied that the matter was covered under clause 22 of the CBA.
- e) The new CBA was registered in Court on 29.01.2020. Clause 22(a) provides that every member of this group shall operate the agency fees for those unionisable employees who are not members of the union but are benefiting from the CBA.
- f) The CBA was signed between the claimant and the Concrete Quarry Owners Group of FKE of which the respondent is a member.
- g) On that basis the claimant claims and prays for deduction of union dues.

The respondent's case is as follows:

a) The prayers sought are contrary to labour statutes. Under section 48(1) of the Labour Relations Act, 2007 union dues which include agency fees are payable by members of the trade union.

b) The employees in issue are not unionisable. They are excluded from union membership by reason of Appendix C of the Industrial Charter. The 30 employees in issue form part of management of the respondent and cannot be unionisable. Their job description particularly places them in management.

Parties filed their respective submissions. The Court has considered all the material on record.

The main issue for determination is whether the claimant has established the case for the respondent to deduct agency fees as prayed for. Deduction of agency fees is governed by section 49 of the Labour Relations Act, 2007. The section requires the claimant to request the Minister to issue an order requiring the respondent to deduct agency fees from wages of each unionisable employee covered by the collective agreement who is not a member of the union. Agency fees will then be deductible from the employees named in the Minister's notice within 30 days of receiving the Minister's notice. The Court finds that the claimant has not shown that it requested for the Minister's order and obtained the same. The Court returns that the claimant has not satisfied the statutory requirement for deduction of agency fees. For that reason alone, the suit must fail. While making that finding the Court considers that clause 22 of the CBA must be construed to mean that agency fees will be deductible but subject to compliance with section 49 of the Act.

Parties being in a continuing relationship, each will bear own costs of the suit.

In conclusion the suit is hereby dismissed with orders each party to bear own costs of the suit.

**Signed, dated and delivered by the court at Nairobi by video-link this Friday 23<sup>rd</sup> October, 2020.**

**BYRAM ONGAYA**

**JUDGE**