



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

CASE NO. 32 OF 2018

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

MERU COUNTY PUBLIC SERVICE BOARD.....1<sup>ST</sup> RESPONDENT

MERU COUNTY GOVERNMENT.....2<sup>ND</sup> RESPONDENT

JUDGMENT

1. The Claimant Union sued the Respondents seeking in the main orders relating to union dues deductions. The Claimant asserts that the Respondents failed to remit union dues to the authorized accounts. The Respondents on their parts assert that the deductions were made and the money remitted to the account specified in the request to deduct union dues. The parties filed their submissions to have the matter resolved in terms of the Rule 21 of the Rules of this Court.

2. In their submissions, the Claimant asserts that the deductions amounting to Kshs. 2,824,300.65 were not made and remitted to the authorized account of the Union. The Claimant thus claims the amount from the month of March 2017 to date and that in terms of Section 48 of the Labour Relations Act, the dues must be paid to the designated account and only the Minister of Labour may revoke or suspend a notice issued to an employer to deduct union dues. The Claimant cited Section 50(8),(9) and (10) of the Labour Relations Act placed an imprimatur on the employer to comply with the notice issued by the Minister. The Claimant relied on the case of **Kenya National Union of Nurses v Kakamega County Public Service Board & 2 Others [2016] eKLR** for the proposition that employers should not transact business with the branches to the exclusion of the Head Office.

3. The Respondents submitted that the union dues were duly deducted as per the evidence it had availed and remitted to the account designated in the request. The Respondents thus submitted that if there is a problem of accountability between the head office and the branch those were issues between the union officials and not between the Claimant and the Respondents. The Respondents submitted that they had nothing to do with the internal arrangements of the Claimant and that the deductions and remittances made were to the Claimant. The Respondents assert that the orders sought cannot be granted.

4. The union dues were deducted and remitted albeit to an account at Barclays Bank of Kenya at Meru. The Claimant union asserts that the correct account to remit the union dues is the Barclays Bank of Kenya Queensway Branch Nairobi or the Co-operative Bank of Kenya, Aga Khan Walk Branch Nairobi and no other. The Respondents dutifully deducted the dues. The Claimant did not enjoin the Meru Branch which received the dues and it would seem the Claimant seeks to tax the Respondents twice. If there was mischief practiced on the Respondents by the union officials at the branch, should they not be part of the suit? If there was notification of the correct account to pay into, the Claimant did not avail such evidence to the court. All we have are documents that indicate the account but none is shown to have been received by the Respondents. The Respondents however exhibit a letter that gave it directions to remit to the account at Barclays Bank, Meru Branch into which the Respondents dutifully have remitted union dues. In the case of **Kenya National Union of Nurses v Kakamega County Public Service Board & 2 Others (supra)**, the court heard a matter where the employers had been having dealings to the exclusion of the national office which is different from this claim. The union officials at the branch are mandated to run the affairs of the Claimant and their misguided steps should not be visited upon the Respondents who made deductions and remitted the dues.

5. Granted the provisions of Section 50 of the Labour Relations Act, the Respondent must ascertain the correct account to pay the sums into and ignore any directives other than the statutory one on where to pay the sums due to the Claimant. In this case effective this month, the Respondents must make payments to the proper account as it seems the Claimant's branch at Meru is acting contrary to the requirements of the head office. A branch is just that, a branch and cannot usurp the role of the head office.

6. In the final analysis, dismiss the suit but make the final order that effective February 2019, the Respondents to deduct and remit union dues only to the account designated in the Gazette Notice issued by the Minister.

It is so ordered.

Dated and delivered at Meru this 8<sup>th</sup> day of February 2019

Nzioki wa Makau

JUDGE