



**REPUBLIC OF KENYA**

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

**CAUSE NO. 11 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**TRANSPORT WORKERS UNION.....CLAIMANT**

**VERSUS**

**ACACIA VENTURES LIMITED.....RESPONDENT**

**KENYA LONG DISTANCE TRUCK DRIVERS**

**AND ALLIED WORKERS UNION.....INTERESTED PARTY**

**JUDGMENT**

1. The dispute between the parties herein is failure by the respondent to remit monthly trade union dues to the claimant in terms of *Section 48 and 50 of the Labour Relations Act, 2007*.
2. The parties herein did not call any witness and rely on the pleadings, witness statements filed and list of documents annexed to the pleadings for the determination of the suit.
3. It must always be remembered that in terms of *Section 107 and 108 of the Evidence Act Cap 80 laws of Kenya*, the claimant bears the onus of proving its case on a balance of probabilities. The respondent only bears the evidential burden of rebuttal once the claimant's case has been sufficiently established.
4. It is not in dispute that the claimant union and the respondent had a Recognition Agreement in terms of *Section 54 of the CBA* and that the respondent had been deducting and remitting trade union dues at the claimant on a monthly basis at the rate of Kshs. 16,200.
5. It is also not in dispute that the respondent stopped remitting the union dues to the claimant with effect from end of December 2016. The claimant made demands to the respondent to pay the dues in vain. There is no evidence that the dispute was referred to the Ministry of Labour for conciliation before the suit was filed in court on 18<sup>th</sup> January 2017. The claimant prays that the respondent be ordered to resume remittance of monthly union dues to the claimant union forthwith and that the respondent pay the arrear union dues not remitted from December 2016.
6. The suit is opposed by the respondent by a memorandum of response to the claim filed on 3<sup>rd</sup> July 2017. The Kenya Long Distance Truck Drivers and Allied Workers Union, applied to be joined as interested parties in the suit and were duly joined.
7. That the claim by the claimant union has no basis since the union lost all its members in the employ of the respondent to the interested party. The respondent prays the suit be dismissed with cost.

**Determination**

8. The issue for determination is:

- (a) Whether the claimant union is entitled to remittance of union dues from the respondent from November 2016 as prayed.

**Response by the Respondent**

9. Respondent's case is that sometime in September 2016, all the unionsable employees of the respondent, who were members of the respondent freely and voluntarily left the respondent union and joined the interested party. That notices were issued in terms of the law to

that effect. That the respondent and the interested party signed a recognition Agreement in November 2016 and the respondent became duly bound to start remitting union dues deducted from its employees to the interested party.

10. On 26<sup>th</sup> July 2017, the court directed Ministry of Labour to investigate the dispute and file a report to court within 60 days.

11. A report was filed in court by Lik Bii County Labour Officer Kisumu County on 4<sup>th</sup> October 2017. The Officer reported to court that both the claimant union and the interested party have a valid Recognition Agreement with the respondent. The Agreement with the claimant union was signed on 24<sup>th</sup> November 2014 whereas the one with the interested party was signed on 4<sup>th</sup> November 2016.

12. The report stated that the employees of the respondent wrote a letter to the respondent in which they informed the respondent that they had ceased to be members of the claimant union and had since joined the interested party.

13. The report further stated that the respondent was currently remitting union dues deducted from its employees to the interested party and had ceased to remit any union dues to the claimant union.

14. The officer reported that upon interviewing the employees, they had expressed their desire to remain as members of the interested party and not with the claimant union.

15. On the basis of these findings, the Labour Officer recommended to the court to respect the choice of the employees of the respondent to leave the claimant union and join the interested party. The Officer further recommended that the respondent continue to remit the union dues to the interested party and not to the claimant union.

16. The Officer further recommended the court to give directions on the issue of the existence of two Recognition Agreements.

17. From the facts of the case, it is clear that the claimant union lost all its members who were employees of the respondent to the interested party.

18. *Section 4 of the Labour Relations Act, No. 14 of 2007* reads:

“(1) Every Employee has the right to

(a) Join a union or

(b) Leave a union.

19. This provision is buttressed by *Article 41(2) (c)* which provides:

“(2) Every worker has the right to:

(c) Form, join or participate in the activities and programs of a trade union.”

20. From the forgoing statutory and constitutional provisions the suit by the claimant has no leg to stand on. The claimant union lost its members who left its membership freely and voluntarily and joined a rival union.

21. The claimant has no basis of receiving any further union dues from the employees of the respondent. Similarly, the Recognition Agreement between the claimant union and the respondent has been overtaken by events. The claimant union does not qualify to be recognized by the respondent anymore in terms of Section 54 of the LRA since it does not have a simple majority (50+1) membership of all the unionsable employees of the respondent.

22. Accordingly, the suit by the claimant union lacks merit and is dismissed. The court makes the following orders therefore:

(a) The Recognition Agreement entered into between the claimant union and the respondent has lost its stratum and is no longer sustainable. The same is therefore struck off by the court.

(b) The interested party is the only recognized union by the respondent.

(c) The respondent to continue deducting union dues from its employees and remit same to the interested party in accordance with the wishes of the unionsable employees of the respondent with effect from November 2016.

(d) Each party to meet their own costs of the suit.

**Judgment Dated, Signed and delivered this 23<sup>rd</sup> day of May, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Mdege for claimant union

Respondent in person

Chrispo – Court Clerk