



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE 82 OF 2019**

(Before Hon. Lady Justice Hellen S. Wasilwa on 23<sup>rd</sup> September 2019)

**KENYA UNION OF**

**SPECIAL NEEDS EDUCATION TEACHERS.....CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**RULING**

1. The Application before this Court for determination is the Claimant's Chamber Summons dated 11<sup>th</sup> February 2019 seeking conservatory orders. In particular, the Applicant seeks the following orders:-

***a. Spent.***

***b. THAT conservatory orders be issued retracting the employer (TSC) either by themselves or through their servants, officers or employees from any way interfering with the Claimant's pay statement by making unions dues deduction to other teacher's union KNUT and KUPPET until the matter will be (sic) heard and determined.***

***c. THAT conservatory order be issued to compelling (sic) the employer (TSC) to refund so, dubious deductions from their pay since 2015.***

***d. THAT conservatory order be issued to the employer (TSC) to clean their pay roll system.***

***e. THAT the Court to issue any other Order feel (sic) fit to stop the mess.***

***f. THAT the cost of this Application be cost in the cause.***

2. The grounds of the Application are that the Respondent has been making unauthenticated deductions on members' salaries despite the Claimant having been registered to represent teachers who have been registered by the Respondent on special education.

3. Further, the Respondent contravened the provisions of Section 21 (b) (ii) of the Labour Relations Act 2007 by preparing a list of the Claimant's members without instructions from the Claimant to act on its behalf.

4. It is the Applicant's case that even after the Minister for Labour gazetted its union dues and the Respondent implemented the same, the Respondent still subjected its members to payment of union dues to other unions. The Respondent continues to violate the rights of its members to date, contrary to article 41 (1) and (2) (c) of the Constitution.

5. The Application is supported by the Affidavit of James Torome and is based on the grounds on the face of the motion.

6. The Application has been opposed vide the Replying Affidavit of Josephine Mueni Maundu sworn on behalf of the Respondent. She avers that the Claimant is not recognized by the Respondent as a union because it has not met the threshold set out in section 54 (1) of the Labour Relations Act.

7. It is her deposition that the Respondent has recognition agreements with Kenya Union of Post Primary Education Teachers (KUPPET) and

the Kenya National Union of Teachers (KNUT). The Respondent has existing collective bargaining agreements with these two unions, which took effect in 2017 and will lapse in 2021.

8. The Respondent contends that the agency fee became payable to KUPPET with effect from 1<sup>st</sup> June 2018 in respect of 25,656 unionizable post primary education teachers who were not members of the union but benefited from the CBA. This was pursuant to L.N. 98/2018, which was also adopted as an order of the Court. It is the Respondent's case that of the 25,656 teachers, 95 were members of the Claimant.

9. The Affiant avers that from the Claimant's list, there were teachers who were members of the Claimant and paid agency fee to KUPPET, those who were members of the Claimant but were not paying agency fees, those who were members of KNUT but not of the Claimant, those who were members of KUPPET and not the Claimant and some who were post primary teachers but subscribed to no union.

10. The matter was referred to conciliation where the Conciliator made a finding that the Claimant's demand had no basis in law and should not be entertained. The Respondent was satisfied with this finding.

11. The Application was disposed of by way of written submissions. The Claimant filed his submissions on 8<sup>th</sup> March 2019 while the Respondent filed theirs on 2<sup>nd</sup> July 2019.

12. The Claimant submitted that the Respondent's action of deducting union dues was against the legal notice. It also the its submission that the Application is merited and made in good faith.

13. On the other hand, the Respondent submits that the Claimant has unlawfully given itself the power to represent 31 teachers who are not its members.

14. Having demonstrated the unions these teachers belong to, the Claimant did not have *locus standi* to institute this cause on behalf of the 31 teachers. Such action is thus unconstitutional, illegal, untenable in law and contrary to Article 40 of the Constitution, Section 4 (1) (a) and (c) of the Labour Relations Act and the ILO Convention Number 98 on the Right to Organize and Collectively Bargain. He relies on Kenya Chemical & Allied Workers Union vs. Polypipes Limited which was relied on in Kenya Union of Sugar Plantation and Allied Workers vs. Mumias Sugar Company Limited & 6 Others [2016] eKLR and D.T. Dobie & Company (Kenya) Limited vs. Joseph Mbaria Muchina & Another [1980] eKLR.

15. It is the Respondent's submissions that although 14 of the teachers are the Claimant's members, they are required to pay union fees under section 49 of the Labour Relations Act as they benefited from the CBA between the Respondent and KUPPET. The Respondent relies on the case of Tailors and Textiles Workers Union vs. Ashton Apparels [EPZ] Limited [2015] eKLR. It is of the view that an employee who chooses to be a member of a union that is not recognized by their employer should pay agency fees for benefiting from the CBA.

16. This is to discourage them from withdrawing their membership or hiding in make shift unions because they could still benefit even without being members. The Respondent relies on the case of Kenya Hotels and Allied Workers Union vs. Attorney General & 6 Others [2015] eKLR, Chicago Teachers Union vs. Hudson 475 U.S. 292 (1986) and Communication Workers of America vs. Beck 487 U.S. 735 (1988).

17. I have examined the averments of both Parties. The contention between the Parties is whether the Claimant's members should continue paying agency fees to other union having joined the Claimant union.

18. The other issue is whether the Respondent should not deduct and remit union dues for the Claimant's members who have joined the union.

19. The Respondents contention is that they have no recognition with the Claimant and so should not be compelled to deduct and remit union dues as sought and to stop deductions of agency fees to other union.

20. This Court notes that the orders sought in the application are the same ones sought in main claim. In the circumstances, resolving this application will determine the main claim. I therefore issue no orders in the interim and direct the Parties proceed with the main claim.

21. Costs in the cause.

**Dated and delivered in open Court this 23<sup>rd</sup> day of September, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Torome for Claimant – Present

Khaseya holding brief Oyuchio for Respondent – Present