



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CASE NO. 429 OF 2017

(Before Hon. Justice Mathews N. Nduma)

KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT

VERSUS

KISUMU WATER AND SEWERAGE COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The suit proceeded ex parte on 8th October 2018, the respondent having defaulted in filing a statement of defence. The grievant testified under oath in support of the undefended claim to the effect that the suit was filed by the claimant union on behalf of CW1, Solomon Onyango Outa David who is the Chairman of the claimant union, Kisumu branch. CW1 stated that he was in the union called NUWASE prior to joining the claimant union. CW1 was arrested on allegations that he had forged workers signature but the case was dismissed since workers said they joined the union voluntarily.

2. On 22nd August 2016, CW1 was sent on compulsory leave for the reason that he had moved workers to a union the employer did not want. CW1 was given a show cause letter to which he respond to. CW1 was invited to a disciplinary hearing but could not attend on the day as he was sick. CW1 asked to be heard on another day however CW1 was dismissed without a hearing. CW1 produced a letter from a doctor showing he was sick on the day he was dismissed. CW1 was elected Branch Chairman of the union on 17th September 2016. CW1 denies all the allegations made against him in the letter of dismissal. The dispute was reported to the Ministry of Labour which appointed a conciliator. The conciliator made a report which is before court in which he recommended that CW1 be reinstated to his job without loss of benefits.

3. CW1 was not working but was the branch chairman of the union at Kisumu. That he was not earning a salary since the respondent was not deducting and remitting union dues. Check-off forms dated 31st October 2016 were presented before court. They are dated 13th September 2016. The union has 47 members at the respondent's place who are still working. The claimant prays the court to find that it was unlawful for respondent to fail to deduct and remit union dues; that the summary dismissal of CW1 was unlawful and unfair; that the court orders the respondent to reinstate CW1 to his job without loss of salary and benefits.

4. After the close of claimant's case and on 15th January 2019, respondent filed a response to the memorandum of claim without leave of court and subsequently on 6th March 2019, almost two months later filed an application seeking to set aside the proceedings and grant extension of time to the respondent to file a response to the claim and be heard in defence of the case.

5. These developments came too late in the hour as the suit was pending judgment at the time.

6. The court in the circumstance has disregarded the statement of defence, filed without leave of court and proceeds to prepare judgment based on the ex parte proceedings.

Determination

7. The court has considered the testimony of CW1, documentary evidence before it and has come to the following conclusions:

8. That CW1 is a former employee of the respondent. That CW1 was actively involved in union activities at the shop floor. That employees of the respondent joined the clamant union guided by CW1.

9. That CW1 was subjected to disciplinary action on account of his union activities and was unlawfully and unfairly summarily dismissed from employment on 31st October 2016. That the claimant union had recruited 47 employees of the respondent to its membership but

respondent had failed to deduct and remit union dues to the claimant union despite receipt of check-off forms to effect the deductions.

10. That the conciliator in this matter found that the summary dismissal of CW1 amounted to victimization on account of union activities and recommended that the respondent reinstate CW1 to his job without loss of benefits.

11. The court has considered the above facts and applicable law and makes the following findings and orders:

(a) The summary dismissal of CW1 by the respondent was unlawful and unfair as it was on account of union activities by CW1.

(b) Refusal by the respondent to deduct and remit union dues to the claimant union was unlawful and in violation of *Section 48 (2) and (3) of the Labour Relations Act No. 14, 2007*. The respondent is directed to commence deductions and remit to the claimant union forthwith. Since three (3) years have not elapsed from the time the summary dismissal took place in October 2016, and as per *Section 49(3) (a) and (4) of the Employment Act, 2007*, the court directs the respondent to reinstate CW1 to his employment without loss of salary and benefits effective from the date of dismissal because CW1 has not found alternative job, the Labour Officer recommended immediate reinstatement of CW1; CW1 was victimized for union activities which conduct is to be discouraged by this court. There is no evidence that the reinstatement is untenable since the respondent is a public institution and employment relationships are not and ought not to be personalized. Reinstatement is the most effective remedy to CW1 in the circumstances of the case. Furthermore, CW1 is presently the Branch Chairman of the claimant union and would be empowered by the reinstatement to better oversee the union activities at the shop floor.

(c) The respondent to pay the costs of the suit.

Judgment Dated, Signed and delivered this 18th day of September, 2019.

Mathews N. Nduma

Judge

Appearances

Mr. Anyul for Mr. Odero for claimants.

M/S Odhiambo for Mr. Njoga for Respondent.

Chrispo – Court Clerk