



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE 241 OF 2019

(Before Hon. Justice Hellen S. Wasilwa on 16th September, 2019)

KENYA NATIONAL PRIVATE SECURITY WORKERS' UNION.....CLAIMANT

VERSUS

HATARI SECURITY LIMITED.....RESPONDENT

RULING

1. Before this Court is the Claimant's Application dated 11th April 2019 seeking the following orders:-

1. Spent.

2. Pending the hearing and determination of this motion inter parties, this Honourable Court do issue interim preservative orders to stop the Respondent from victimizing, harassing or coercing, intimidating or otherwise dismissing or terminating any of the Union members whose name appear in the check off system.

3. Pending the hearing and determination of this motion inter parties this Honourable Court do direct the Respondent to allow the Claimant/Applicant access and meet the workers outside working hours.

4. ... from all the unionisable employees who have signed the check-off forms therefore acknowledging membership and remit the money so deducted to the Claimant's gazetted account (Filed as incomplete).

5. Pending the hearing and determination of the claim, the Respondent be directed to pay from its kitty the sums due and owing to the Claimant as union dues, which the Respondent has neglected/failed and/or refused to deducted (sic) or remit from members whose names appear in the check-off notices.

6. The Respondent be hereby directed to issue employment letters, pay wages in accordance with government stipulated (General Wages) – Legal Notice 2 of 2018, issued on 8th January 2019, pay standard overtime and house allowance and pay statutory deductions NHIF and NSSF.

7. The Respondents to bear the costs of this Application in any event.

2. The grounds of the Application are set out in the motion itself as well as the Supporting Affidavit of Isaac G.M. Andabwa. The Applicant deposes that upon forwarding a fully signed check off system to the Respondent of 249 of its employees, the Human Resource refused to acknowledge receipt and the Respondent has been harassing and victimizing the said employees since.

3. The Respondent has dismissed workers who actively participated in union activities and has threatened to continue terminating and dismissing workers for joining the union. Further, that the Respondent continues to underpay its workers and has declined to deduct union fees from the 249 employees even after discussions with the Applicant's union representatives.

4. The Applicant reported the matter to the Ministry of East African Community, Labour and Social Protection Department of Labour. Parties were invited for conciliation but the Respondent did not attend or submit a memorandum as required. As such, the matter was referred to this Court. It is the Applicant's position that it has the sole mandate to represent workers in the security industry.

5. The Application has been opposed vide the Replying Affidavit of Josphat K. Mwangi swearing the same on behalf of the Respondent. The

deponent deposes that the Applicant has concealed material information that it had filed and later withdrew Cause 90 of 2013 between the same parties where it sought recognition of its union and deduction of union dues. As such, the Claimant is non-suited as no recognition exists between the Claimant and the Respondent.

6. The Respondent denies harassing or victimizing its employees. The deponent deposes that some of the listed persons in the claim herein, are not the Respondent's employees and that no deductions have been effected as there is no recognition agreement. The Respondent contends that there was no recommendation for deduction of union fees by the conciliator.

7. The Respondent urged this Court to dismiss the Application with costs.

Submissions by the Parties

8. In its submissions filed on 21st May 2019, the Claimant submits that where an employee has signed up to join a trade union of their choice, Section 5 of the Labour Relations Act protects them from victimization for engaging in trade union activities. This is also contrary to Articles 36 and 41 of the Constitution as well as Article 1 of Convention No. 87 Freedom of Association and Protection of the Right to Organize, 1948.

9. The Claimant further submits that pursuant to Section 48 of the Act, an employer is bound by law to remit union dues on account of its employees who have joined the union, with or without a recognition agreement. The Claimant relies on the case of **Kenya Union Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers vs. British Army Training Unit Kenya [2015] eKLR.**

10. The Claimant submits that the Respondent's employees are entitled to payment of minimum rates of remuneration applicable to security officers. Further, that the burden to give housing or housing allowance vests in the employer. It is the Claimant's further submissions that the non-issuance of pay slips by the Respondent is an indication that the Respondent may not have remitted NSSF and NHIF.

11. On the other hand, the Respondent in its written submissions filed on 10th June 2019 submits that the Application should be dismissed because there is no recognition agreement and that there are no instructions from its employees to deduct union dues from their salaries hence has no legal basis to deduct the same.

12. The Respondent has relied on the cases of **Kenya National Union of Nurses vs. County Public Service Board Homabay [2018] eKLR** and **Kenya Union of Printing, Paper Manufacturers and Allied Workers vs. Packaging Industries Limited & Another [2014] eKLR.**

13. The Respondent further submits that the instant Application should be struck out since the Claimant lacks the *locus standi* to represent its employees. The Respondent relies on the cases of **Communication Workers' Union vs. Safaricom Limited [2014] eKLR** and **Kenya Union of Employees of Voluntary and Charitable Organizations vs. Board of Governors & Maina Wanjigi Secondary School [2015] eKLR.**

14. I have examined all the averments of both Parties herein. The main contention by the Applicant is that the Respondent has refused to allow them to meet their union members and are in turn victimising, harassing, coercing, intimidating or otherwise dismissing them on account of union membership.

15. They contend that the Respondents have also refused to deduct and remit union dues despite serving them with check off forms authorising the said deductions.

16. The Applicant also contends that the Respondent is not issuing their members with employment letters, nor paying them the requisite wages and neither are they being paid standard overtime and house allowance nor remitting NSSF and NHIF dues.

17. The Respondents have countered this contention with the position that the Applicant have no recognition agreement with them and so cannot have locus to file this Claim/Application.

18. Article 41 of the Constitution provide that every employee has a right to form or join a union of their choice. Membership of such a union is not pegged on any recognition agreement with any employer.

19. Section 48 (2) & (3) of Labour Relations Act also states as follows:-

2. "A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to:-

a. deduct trade union dues from the wages of its members; and

b. pay monies so deducted:-

i. into a specified account of the trade union; or

ii. in specified proportions into specified accounts of a trade union and a federation of trade unions.

3. An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade

union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction”.

20. The Applicant have demonstrated that they served Respondents with check of forms authorising deductions, which the Respondent should effect.

21. As to issue of harassment or victimization of the union members, this is not allowed and if it is going on should cease henceforth.

22. As for the other prayers on payment of minimum wages and remittances to be made of NSSF and NHIF, these are matter to be adduced through evidence. I will therefore not delve into the said issues at this stage, which this Court will consider in the main cause.

23. Costs in the cause.

Dated and delivered in open Court this 16th day of September, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Onyancha for Claimant – present

Wesonga holding Mr. Githinji for Respondent – Present