



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 11 OF 2019

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

KIAMBU COUNTY PUBLIC SERVICE.....1ST RESPONDENT

NYERI COUNTY PUBLIC SERVICE.....2ND RESPONDENT

LAIKIPIA COUNTY PUBLIC SERVICE.....3RD RESPONDENT

NYANDARUA COUNTY PUBLIC SERVICE.....4TH RESPONDENT

KIRINYAGA COUNTY PUBLIC SERVICE.....5TH RESPONDENT

RULING

1. Before me is the motion by the Claimant union regarding deduction of union dues. The motion was precipitated by the Council of Governors letter dated 15th February 2019 under the hand of the Governor of Kakamega County Hon. Wycliffe Ambetsa Oparanya. The Ruling addresses the effect of the letter and the Legal Notice No. 160 of 2018. The Claimant submits that the Respondents have erred in failing to deduct and remit union dues in terms of the Legal Notice. The Claimant submits that the issue of unremitted dues by the 2nd and 3rd Respondents remains as an unresolved issue. The Claimant asserts the Respondents have not been effecting deductions in terms of Legal Notice No. 14611 of 2013 which set the sum due as 1.5% of the employee's basic pay. The Claimant argues that the Respondents as employers are enjoined by Section 19 of the Employment Act to pay out of their own funds the sums that were not remitted. The Claimant submits that the Respondents made irregular deductions as per the payroll by-products. The Claimant submitted that once the legal notices were gazetted it became an official announcement for general information for the public and hence the Respondents could not have grounds to assert they were not notified. The Claimant submitted that under Section 48(5) of the Labour Relations Act the order by the Minister may vary, revoke, suspend or amend the order and takes effect the following month following the month which the notice is served on the employer. The Claimant submitted that Respondents were bound to comply with the order contained in the Gazette Notice. The Claimant relied on the case of **Banking & Finance Union (Kenya) v Maisha Bora Sacco Society Limited [2016] eKLR** in which Mbaru J. held that Section 48(3) applied to an order issued by the Minister. Section 48(3) provides as follows:-

48. (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 the prescribed form signed by the employees in respect of whom the employer is required to make a deduction.

The Claimant submitted that the Respondents were therefore bound to deduct union dues as directed in the notice. The Claimant urged the Court to grant the prayers sought and order the payment of arrears as well.

2. The Respondents oppose the motion and in the 2nd and 3rd Respondent's case they argue that they have not failed to deduct union dues as there is a question as to whether the Legal Notice No 160 of 2018 has been served upon the Respondents. The 2nd and 3rd Respondents aver they became aware of the said notice upon being served with this claim. The 2nd and 3rd Respondents argue that the legal notice was served upon the Council of Governors and not on the Respondents. They argue that the provisions of Section 48(5) of the Labour Relations Act provide that the notice should be served upon the employer. The 2nd and 3rd Respondents assert that no arrears can ensue if the legal notice was not served upon the Respondents. The 2nd and 3rd Respondents assert that they are willing to abide by the consent entered into on 11th June 2019 on deduction of union dues and ought therefore to be removed from the suit.

3. The gravamen of the suit is the applicability of Section 48 of the Labour Relations Act. It is not in dispute that in 2013, Legal Notice No.

14611 of 2013 was issued in respect of deduction of union dues for members of the Union. In it the remittance was to be 1.5% of the basic pay. This notice is what was amended by Legal Notice No. 160 of 2018. In it there was provision for the deduction of a flat rate of Kshs. 650/- a month from the members of the Trade Union. In February 2019, the Council of Governors issued a directive to the effect that the trade union dues would be remitted by employees in terms of Section of the Labour Relations Act. Sections 48(3) and (5) of the Labour Relations Act provide as follows:-

48.(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 the prescribed form signed by the employees in respect of whom the employer is required to make a deduction.

(5) An order issued under this section, including an order to vary, revoke or suspend an order, takes effect from the month following the month in which the notice is served on the employer.

(underline for emphasis)

4. In the matter before me, it is clear the Claimant did not serve the notice upon any of the Respondents before the Court. The Claimant argues that judicial notice should be taken of the effect of Gazettement. Whereas a Gazette Notice such as Legal Notice No. 160 of 2018 has the effect of communicating the legal position, the law requires that the notice be served upon the employer to allow for the effect of the second part of the Section. In the premises I find and hold that having failed to serve the notice on the employer the Claimant is not entitled to arrears prior to June 2019 when the notice was served as a by the way in this suit. As the 2nd and 3rd Respondents have been in compliance since the consent order of June 2019, the 2nd and 3rd Respondent are excluded from application of the orders that will ensue.

5. The Council of Governors through the Chair Hon. Wycliffe Ambetsa Oparanya made a determination that the deductions cease to be made and the members to forward their deductions. Whilst it is true members of unions can pay their dues directly the order to opt out of the system of deductions would be anathemic to the good order in industrial relations. Since the Claimant negotiates terms of service with the Respondent

It is so ordered.

Dated and delivered at Nyeri this 4th day of November 2019

Nzioki wa Makau

JUDGE