



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 759 OF 2018**

**KENYA UNION OF ENTERTAINMENT AND**

**MUSIC INDUSTRY EMPLOYEES.....CLAIMANT**

**-VERSUS-**

**MULTI MEDIA UNIVERSITY.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

**JUDGMENT**

The claimant filed a memorandum of claim on 21.05.2018 through Job W. Mucuha, General Secretary. The prayers are for:

- a) That the respondent be ordered to comply with mandatory provisions of the law being section 48 of the Labour Relations Act, 2007 by way of deducting and remittance of union dues.
- b) That the respondent to accord the claimant recognition agreement by signing the same within specific time frames to pave way for CBA negotiation.
- c) The respondent to pay 3% of the claimant's members gross salaries from the month of January 2018 for 49 employees.
- d) The respondent be restrained from victimizing the claimant members on ground of Trade Union activities affiliation.
- e) Any other relief the Honourable Court may deem fit to grant.

The claimant's case is that in 2017 it recruited members and served form S upon the respondent on 01.12.2017 but the respondent has failed to deduct and remit union dues as per section 48 of the Labour Relations Act, 2007. Further that it has recruited over 50% plus one and it is entitled to recognition. A trade dispute was reported in that regard and the certificate of unresolved dispute dated 15.03.2018 issued.

The respondent filed a memorandum of reply to the memorandum of claim on 04.07.2018 through Alfred Deya Advocate for Miller & Company Advocates. The respondent's case is as follows:

- a) The respondent came to learn about the claimant when it filed Cause No. ELRC 499 of 2018 against and which was struck out in a ruling by Radido J on 15.05.2018. On the same 15.05.2018 the claimant forwarded to the respondent a draft recognition agreement.
- b) The trade dispute was reported prior to the claimant informing the respondent that it wished to exercise the right to organise.
- c) The Multimedia University and Conference Centre operates as the income generating unit for the university. It has both seasonal and permanent employees. Permanent employees are members of the Kenya University Staff Union (KUSU). The respondent's academic employees are members of the University Academic Staff Union (UASU). The two unions have concluded recognition and collective agreements with the two unions. The respondent has not received written confirmation from its employees that they belong to the claimant union.
- d) If the claimant has recruited employees as alleged, then nothing stops the claimant from seeking union dues directly from the members as envisaged in section 52 of the Labour Relations Act, 2007.
- e) The memorandum of claim be dismissed with costs.

On 10.07.2019 by consent of the parties it was ordered that pending issues for determination are on payment of union dues arrears for period as per orders and whether the claimant is entitled to recognition. Parties agreed that the issues to be determined on the basis of pleadings and documents on record.

The parties filed their respective submissions. The claimant has submitted that it is entitled to union dues from the time form S was served being Kshs.1, 020, 600.00 and a further Kshs.56, 700 for each month effective end of August 2019. The Court finds that the amount claimed was not specifically quantified in the statement of claim and was not strictly proved as is trite law to do so. The same is declined but orders will issue for the respondent to continue deducting union dues and remitting on monthly basis for all employees recruited by the claimant.

On the issue of recognition, the claimant has exhibited the signed lists and affidavits of recruited members. While the respondent says it has recognised other three trade unions it has not denied and demonstrated that the claimant is equally the sector trade union for the category of employees it seeks to recruit and has recruited over simple majority at the Multimedia University and Conference Centre. As urged for the claimant the Court returns that it is the sector union for the employees it seeks to represent. Section 54 of the Labour Relations Act provides that a trade union shall be recognised for purposes of collective bargaining if the trade union represents simple majority of unionisable employees. Of the targeted category of unionisable employees, the claimant has established that it has met the threshold as submitted and it is entitled to the recognition.

Each party will bear own costs of the suit in furtherance of good industrial relationship between the parties.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- a) The respondent to continue deducting and remitting the union dues on monthly basis for its staff being members of the claimant union.
- b) The parties to conclude the recognition agreement by 15.12.2019 to pave way for negotiation of the relevant CBA.
- c) Each party to bear own costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Friday, 1st November, 2019.**

**BYRAM ONGAYA**

**JUDGE**