



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

CAUSE NO. 1019 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 15th March, 2018)

KENYA NATIONAL PRIVATE

SECURITY WORKERS UNION.....CLAIMANT

VERSUS

DESERT SECURITY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein filed his Memorandum of Claim on 31.5.2016 indicating that the Respondent had refused to deduct and remit union dues to them contrary to Section 48 of the Labour Relations Act.
2. The Claimant have contended that they are a duly registered trade union registered under Section 19 of the Labour Relations Act 2007 of Laws of Kenya and mandated to represent employees engaged in Private Security Industry. The Claimant aver that they recruited employees of the Respondent into union membership by means of checkoff within the mandatory provisions of Section 48 of the Labour Relations Act and did send the duly signed check off forms to the Respondent to effect deductions.
3. On 14.4.2015, the claimant reported a Trade Dispute in accordance with Section 62(1) of the Labour Relations Act. On 30/9/2015 a Certificate was issued by the Conciliator (Appendix GM7) for the next level of arbitration.
4. The Claimant contend that the Respondent have been circumventing the law and if allowed they will go ahead victimizing, harassing and sacking the workers.
5. The Claimant want the Respondent compelled to deduct and remit the union dues as per the check off forms and deposit the same in the Claimant's gazetted account. They also seek orders that the Respondent be ordered not to intimidate, victimize, harass or sack any workers involved in union activity. They seek orders that the Court directs the Respondent to allow workers to be organized and engaged in a union of their choice. They also seek for costs of this case.
6. The Claimant attached the check off forms signed by their union members dated 3rd February 2015 and 13th August 2015, Gazette Notice and letters from COTU dated 26th October 2015 as their exhibits.
7. The Respondents filed their Reply to the Memorandum of Claim on 19.7.2016 through the Firm of Messers Sagana, Birir and Company Advocates. The Respondent deny this claim and aver that most of the persons that have allegedly been recruited by the Claimants are no longer their employees and so it is

impossible to remit any dues for a member who is not their employee. The Respondent also aver that those employees wrote to them denying they were members of the Claimant and did not want any moneys deducted from their salaries – (Appendix 2).

8. The Respondents aver this suit is premature and want it to be dismissed.

9. I have examined all the averments of both parties plus their submissions filed by the Claimant. The Claimant submitted that they had recruited 80 employees of the Respondent. They annexed the check off forms.

10. The Respondents had averred that some of these employees are no longer their employees. They did not produce their employment records to sift those who are in their employment against those not in their employment. They also submitted that some of the employees wrote to them denying union membership. The Respondents did not also state why they did not remit the dues for the rest who did not deny union membership.

11. Article 41(2) of the Constitution of Kenya 2010 provides that “every worker has a right to:-

a)

b)

c) ***to form, join or participate in the activities and programmes of a trade union***).

12. This right to join a trade union is coupled with the obligations stipulated under Section 48 of Labour Relations Act 2007. Section 48(2) of Labour Relations Act provides that:-

(1) “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.

13. In exercising this right Section 48(6) of Labour Relations Act states as follows:-

“An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union”.

14. Whereas the Respondent are not required to remit deductions for an employee who has notified the employer in writing that the employee has resigned from the union, the employer is obligated to remit union dues for employees who have indicated their willingness to form a union.

15. In this respect, it is my finding that the Respondent ought to respect employee rights to join and participate in the activities of a trade union.

16. I therefore find that the Claimant have established their case against the Respondent. I direct that the Respondent do remit union dues as per the check off forms remitted by the Respondents save for those members who have indicated in writing that they are not members of the union.

17. The Respondent should deposit the said dues in the registered Claimant’s Account immediately with

effect from dues of March 2018. The Respondents are further ordered not to intimidate, victimize, harass or sack any worker involved in union activities. The Claimant union members should also be allowed to engage in organized union activities of their choice.

18. Costs of this claim to be borne by Respondents.

Dated and delivered in open Court this **15th day of March, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for parties