



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 537 OF 2018

KENYA NATIONAL PRIVATE

SECURITY WORKERS UNION.....CLAIMANT

v

RADIUM SECURITY SERVICES LTD.....RESPONDENT

RULING

1. This ruling relates to an application by the Union dated 13 April 2018 and seeking orders

1. ...

2. ..

3. Pending the hearing and determination of this motion and/or the main case herein this honourable court do compel the Respondent to deduct Union dues 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.

4. Pending the hearing and determination of this motion this honourable court be pleased to order the Respondent to pay from its kitty, all monies it would have, except for its refusal/failure and/or negligence, deducted from employees' wages and remitted to the Claimant as trade union dues since the date the remittance became due after the employees first joined the Union forthwith.

5. Pending the hearing and determination 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 deduct or remit from members whose names appear in the check-off notices.

6. The Respondent to bear the costs of this application in any event.

2. The Respondent filed a replying affidavit in opposition to the application on 3 May 2018 and the Court took submissions on 8 May 2018.

3. It is not in dispute that the Union recruited and forwarded to the Respondent the names of its (Respondent's) employees who had joined the Union.

4. It is also not in dispute that the back of the check-off forms indicated the particulars of the gazette notice by the Minister under section 48(2) of the Labour Relations Act including bank account number.

5. When the Respondent failed to deduct and remit union dues, the Union reported a trade dispute to the Cabinet Secretary, East African Community, Labour & Social Protection through a letter dated 21 September 2017.

6. The Cabinet Secretary appointed a Conciliator and the Conciliator wrote severally to the parties but the dispute remained unresolved and he issued a certificate of unresolved dispute on 5 April 2018, hence the present proceedings.

7. In opposing the application, the Respondent asserted that it did participate in the conciliation process but no recommendations were made by the Conciliator; that some of the names in the check-off forms were repeated; that some of the names in the check-off forms were not clear/had been cancelled and that it could not be compelled to remit union dues before the signing of a recognition agreement.

8. The law regulating the deduction of union dues is located in section 48 of the Labour Relations Act.

9. Section 19(1)(g) of the Employment Act, 2007 is also implicated as it allows an employee to dispose of his wages as he/she wishes.

10. There is material before Court that the Cabinet Secretary issued the requisite gazette notice; that some employees of the Respondent joined the Union and the Union furnished the Respondent with Form S as contemplated by the third schedule to the Labour Relations Act.

11. The Court has looked at the Form S as sent to the Respondent. Apart from instances where only one name is given and one cancellation, the names are legible and clear.

12. The argument by the Respondent that the recognition agreement should precede the deduction of union dues is not sound in law or logic. The signing of a recognition does not trigger the commencement of deduction of union dues. It comes after.

Orders

13. Considering the above, the Court finds merit in the application by the Union and allows it in terms of proposed order 3, save for the cancelled names and instance(s) where only one name has been given.

14. The deductions and remittance of the dues to commence effective July 2018 failure to which the Respondent will meet the dues owing from its own resources.

15. No order as to costs considering the envisaged social partnership between the parties.

Delivered, dated and signed in Nairobi on this 29th day of June 2018.

Radido Stephen

Judge

Appearances

For Union Ms. Onyancha, Kenya National Private Security Workers Union

For Respondent Ms. Sang instructed by Chwero & Co. Advocates

Court Assistant ..Lindsey