



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2045 OF 2014**

**(Before Hon. Justice Hellen S. Wasilwa on 24<sup>th</sup> September, 2018)**

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

**-VERSUS-**

**LAVINGTON SECURITY LIMITED.....RESPONDENT**

**RULING**

1. The Application before this Court is one dated 31<sup>st</sup> May 2016 brought under Section 12 Industrial Court Act, 2011, Section 5(1) of the Judicature Act Cap 8 Laws of Kenya, Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya and Order 22 Rule 28 of the Civil Procedure Rules and all enabling provisions of law seeking Orders that:-

***a. This application be certified as urgent and be heard on priority and ex-parte in the first instance.***

***b. Leave be granted to the Applicants to institute Contempt of Court proceedings against the General Manager Wells Fargo Limited for disobeying this Court's Orders given on the 15<sup>th</sup> April 2016 and that the said General Manager be summoned to Court on a specified date to show course why he should not be punished for being in contempt of this Court orders.***

***c. This Honourable Court do find and hold the General Manager Lavington Security Limited to be in contempt of this Court's orders given on the 15<sup>th</sup> April 2016 and served upon his Advocate on 22<sup>nd</sup> April 2016 an with the extracted Orders thereto on 17<sup>th</sup> May 2016.***

***d. The said General Manager Lavington Security Limited be condemned to serve civil jail for 6 months for the contempt.***

***e. The Respondents do bear the costs of this application.***

2. The Application which is supported by the affidavit of Isaac G. M. Andabwa is premised on the grounds that:-

***1. This Honourable Court on the 15<sup>th</sup> April 2016, delivered its ruling on the Application dated 17<sup>th</sup> November 2015. The Claimant extracted the order on the 26<sup>th</sup> April 2016.***

***2. Armed with the Court order issued on the 26<sup>th</sup> April 2016, the Claimant delivered the said Court order to the Respondent's Advocates and the Respondents on the 17<sup>th</sup> May 2016.***

***3. Since April 2016 the Respondents have declined to deduct and remit Union dues to the Gazetted Union Account.***

***4. It is in the interest of justice and the upholding of the due process of the Court for the orders sought hereinto be granted.***

***5. The Claimants/Applicants have no other way of enforcing the said order.***

3. The Respondents filed their Replying Affidavit where they aver that the Claimant's Application for contempt of Court is unattainable because the Respondent has not disobeyed any Court order as alleged by the deponent as he ought to have served the order that was allegedly disobeyed since the said order ought to have been accompanied by a penal notice warning of the consequence of disobedience.

4. They state that at no point has the Respondent refused to deduct union dues but rather it is because the Respondent had issues with the names in check off systems. Parties recorded a consent in Court on 29<sup>th</sup> June 2016 to deduct union dues for undisputed employees who have signed the check off system.

5. They aver that this Application is prematurely before Court owing to the fact that the Claimant has not proved any act of contempt has been committed by any officer of the Respondent or at all hence pray that the application be dismissed with costs.

### **Submissions**

6. The Claimants filed their submissions where they submit that the entire process in relation to verification was not only a mockery but a sham and throws back a lot of doubt to the seriousness and commitment of the officer appointed to carry out the entire process.

7. They aver that the entire exercise was totally flawed with high level of impunity which is detrimental to the lives of more than 10000 workers at Respondent company, since the union submitted a comprehensive report together with annexures of the unfair labour practices and expected the Conciliator to act fairly, only to come up with a scanty and scrupulous report over her findings.

8. They further aver that the methodology used on the ground by the said officer in carrying out the verification exercise were wanting as she did not bother to ask for the checklist but instead witnessed the respondent operations Manager snatch the checklist in one of the assignments (KEMU), which would have formed good evidence on whether the security officers were in employment or not.

9. They state that the Respondent did not produce or attach the list of the alleged lost assignments/contracts and continue to state that the labour officer watched the guards being intimidated during verification exercise and when the union protested, she called off the exercise hence pray that the Respondent be directed to stop victimizing, intimidating and threatening the workers from joining the union of their choice.

10. The Respondent filed their submissions where they submit that the Commissioner exercised due diligence during the data collection as she employed two different methods that resulted to the same findings; that is Claimant's check-off list is invalid for want of details. The Claimant's dissatisfaction with the manner the Commissioner conducted the exercise is an afterthought as they could have opposed the same during the exercise. Instead, they participated in the exercise freely without any coercion knowing too well the implications of the said exercise.

11. They further aver that the recommendations made by the Commissioner are sound in law as the Claimant's check-off lists are invalid for want of details and the allegations made by the Claimant against the Respondent's payroll have been raised, they therefore submit that the recommendations do not favour just one Party but all the Parties in question hence in the interest of justice, it would be fair and just if the Honourable Court upholds the recommendations given by the Commissioner's report dated 14<sup>th</sup> November 2017.

12. I have examined all the averments of the Parties respectfully. The single issue for determination by this Court is whether the Respondent has deducted and remitted union dues from the Claimant union members to the Union as directed by Court following the Ruling on 1.9.2017.

13. On 1.9.2017, I referred this confirmation to the Labour Commissioner for verification.

14. The Conciliator Mr. Yidah carried out his verification and submitted a report to Court dated 5/12/2017 indicating that only 60 employees had been terminated by the employer and there had been no notified redundancies hence the Court should compel the employer to deduct the union dues as per the check off systems.

15. Another report was also submitted to Court by another Conciliator Hellen Maneno dated 15/11/2017 who indicated that the employer had remitted union dues from June 2016 to December 2016 – all totaling 82,800/= for 95 employees all banked in January 2017.

16. She also averred that remittances from January 2017 to date had not been done due to lack of proper records of employees who are union members.

17. The labour officer recommended that the union should submit an updated check off list for the period 2015 to date. She also recommended submission of fresh check off forms. Following this report, the Parties were asked to make their respectful submissions. There were 2 reports by the 2 labour officers with each supporting either side of the case. In that case, I will rely solely on the documents before me.

18. The Claimant filed their documents in this case on 1.3.2017 which show check off list forms, verified by the Respondent marked A and others sent to the Respondent and received on 4.8.2016 marked B. From these lists, the Claimant was able to show they have a membership of 2640 members.

19. The check off forms show the willingness of these members to join the union and to have their union dues deducted by their employer for remittance to the union. There is no indication that these forms are forged or the members do not exist.

20. It is therefore my finding that the Respondent's failure to deduct the union dues as directed by the Court is tantamount to curtailing the members' right to join and participate in activities of a trade union as envisaged under Article 41 of the Constitution.

21. I therefore direct that the Respondent should remit the union dues of the members on the check off forms as remittances. In default the Respondent will be liable to remit the dues from their own funds when they fall due.

22. Costs to the Claimants.

**Dated and delivered in open Court this 24<sup>th</sup> day of September, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Everlyne for Claimant Union – Present

Respondents – Absent