



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 857 OF 2018

(Before Hon. Justice Hellen S. Wasilwa on 9th October, 2018)

BANKING, INSURANCE &

FINANCE UNION (KENYA).....APPLICANT/CLAIMANT

VERSUS

PREMIER CREDIT LIMITED.....RESPONDENT

RULING

1. The Applicant/Claimant filed a Statement of Claim dated 04/06/2018 and a Notice of Motion dated 04/06/2018 and filed in Court on 05/06/2018 under Section 12 (4) of the Employment and Labour Relations Court Act, Section 74 of the Labour Relations Act and all other enabling provisions of the law alleging failure/refusal to implement the check-offs system and remit union dues from unionisable employees and refusal to sign recognition agreement by the Respondent.

2. In the Notice of Motion Application the Applicants sought the following orders:-

1. Spent

i) THAT this Honourable Court be pleased to certify the subsequent claim being urgent and to be fast-tracked as provided for under the provisions of Section 74 of the Labour Relations Act, 2007.

ii) THAT this Honourable Court does issue an Order Compelling the Respondents, themselves or by their recognized agents or principals to stop from intimidating, harassing, coercing and/or threatening unionisable employees to revoke their union membership until the hearing and determination of the statement of claim.

iii) THAT this Honourable Court does issue an Order Compelling the Respondents, themselves or by their recognized agents or principals to stop from intimidating, harassing, coercing and/or threatening to dismiss or terminate the employee's contract of employment because of their union membership until the hearing and determination of the Statement of Claim.

iv) THAT this Honourable Court do award costs in favour of the Applicants as foresaid.

3. The Applicant/Claimant averred that they have recruited one hundred ninety two (192) unionisable employees employed by the Respondent as its members. They also contend that they served the check-offs as provided for in law on 4th July 2016. The Respondent refused to effect union dues deduction and sign recognition agreement. The Applicant/Claimant reported a trade dispute on 7th September 2016.

4. A Conciliator was appointed by a letter dated 7th February 2017. Parties failed to agree at the conciliation level and the conciliator issued a Certificate of unresolved dispute as per Section 69 of the Labour Relations Act on 19th September 2017. The Applicant/Claimant moved this Court under Miscellaneous Application Number 151 of 2017 and the same was withdrawn on 16th January 2018 as there was no substantive claim.

5. The Applicant/Claimant has now filed a substantive claim and an application seeking the above orders. The Claimant avers that the Respondent has refused and/or failed to effect union dues deductions after duly being served with the check-off in accordance with Section 48 of the Labour Relations Act. The Respondent has also refused to sign recognition agreement.

6. The Respondent opposed this application through their Replying Affidavit sworn by one Esther Kamau who has deponed that they are willing to deduct and remit union dues but:-

1. ***THAT the situation of the Applicant insisting that the Respondent implement the check-off, and the Respondent's employees maintaining that they are not part of the Applicant Union, has the Respondent caught between a rock and a hard place.***

2. ***THAT I have been advised by the Respondent's Advocates on record, which advice I believe to be true, that in the circumstances, it is prudent that this matter proceeds for trial as it cannot be effectively determined through the present application.***

7. I have examined all the averments of the parties herein. It is evident that there are some check off forms which have been submitted by the Applicant as proof of some employees of the Respondent joining the Claimant Union. There is also proof that some of the said members have since withdrawn their membership from the Claimant union.

8. It is imperative that the true position should be established to understand who the Claimant's members are and who are not. In the circumstances, it is my finding that the prayers sought by the Applicants cannot be granted at this point without establishing the true facts. I decline to grant any interim orders and direct that the main claim proceeds for full hearing.

9. Costs will be in the course

Dated and delivered in open Court this **9th day of October, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Githinji holding brief for Musyoki for Respondent – Present

Applicant/Claimant – Absent