



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1800 OF 2015
KENYA NATIONAL PRIVATE SECURITY
WORKERS UNION CLAIMANT
VERSUS
P. G. SECURITY LIMITED RESPONDENT

M/S Onyancha for claimant/applicant

Mr. Ouma for respondent

RULING

1. By a notice of motion application filed on 9th October 2015, the claimant/applicant seeks for orders that;

1. The claimant is entitled by the Labour relations Act to recruit employees of the respondent into union membership.

2. The claimant did recruit employees of the respondent into union membership by means of check-off within the meaning of 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 deduction to the union gazette account.

3. The respondent on receipt of the check off forms from the claimant has neglected, failed and/or refused to deduct or emit from members whose names appearing on the check-off notices.

The respondent is likely to victimize its employees who are union members for their involvement in the union activities.

5. The respondent has not paid its employees the September 2015 salary and the employees have no other means of survival.

2. The application is founded on the grounds set out under paragraphs 1 to 8 of the notice of motion which may be summarized as follows;

i. The respondent has failed to deduct union dues in terms of the check-off forms served on it by the

union.

ii. The respondent is likely to victimize employees who are union members for their involvement in the union activities.

iii. The respondent has failed to pay its employees September 2015 salaries and when they demanded to be paid were harassed, intimidated and threatened with instant sacking.

iv. The respondent unlawfully retains National Identity Cards of its employees and their Academic and Professional Certificates.

v. That respondent violates freedom to associate freely under Article 41 of the Constitution. The grounds aforesaid are embellished in the supporting affidavit of Mr. Isaac G. M. Andabwa the National General Secretary of the claimant union.

3. Mr. Andabwa states that on 17th January 2014, the union wrote to the respondent requesting for a meeting on 23rd January 2014 on the issue of union dues remission to the gazette account in vain.

4. On 7th October 2014, the union wrote to the Provincial Labour Officer on the issue of the respondent retaining employees original National Identity Cards and certificates but to date same have not been released.

5. On 7th October 2014, employees demanded payment of their September salary but have not been paid.

6. On 8th October 2015, union wrote to FKE on the retention of employees documents. The applicant prays that the respondent to desist with the aforesaid unfair practices and interim orders to issue as prayed.

Response

7. The respondent filed a replying affidavit on 30th November 2015 and written submissions on 21st June 2016 and the crux of the response is as follows;

i. The respondent admits keeping original National Identity Cards of the employees but denies that it keeps original certificates of the employees.

ii. The respondent denies having received check-off forms from the union as claimed or at all and states that there has been no verification exercise to confirm membership of members to allow deductions.

iii. That deduction of union dues is subject to verification of members listed in the check-off forms as well as the union securing a simple majority of its employees which the applicant has not attained.

iv. With regard to payment of September 2015 salary, the prayer has been overtaken by events since the delay in payment caused by an audit being conducted on the respondent to establish genuine employees of the respondent was finalized and payment done.

8. The respondent prays the application be dismissed with costs.

Determination

9. The criteria for granting interim orders is well set out in the case of **Giella V. Cassman Brown & CO. LTD EA 358** as follows;

- a) Applicant must establish a *prima facie* case with a probability of success.
- b) Applicant must show that, he is likely to suffer harm that may not be remedied by an award of damages.
- c) If the court is in doubt, decision to be made on the balance of convenience.

10. With regard to the issue of retention of National Identity Cards and original Academic Certificates of the employees of the respondent, by the respondent, the applicant has made a *prima facie* case with a probability of success and the court directs the respondent to release original Identification Cards and Academic Certificates held by it forthwith.

11. With regard to the issue of deduction of union dues, payment of September salary and alleged harassment and victimization, these are remedies that are available upon hearing of the suit on its merits and therefore must await such hearing and determination.

12. The final orders of court are thus;

The respondent is directed to release all original National Identification Cards and original Academic/Professional Certificates held by it to the concerned employees forthwith in terms of prayer 3 of the notice of motion.

13. The rest of the prayers to await the hearing and determination of the suit on the merits .

14. Costs in the cause.

Dated and delivered at Nairobi this 3rd day of February 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE