



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 8 OF 2016

(Before D. K. N. Marete)

KENYA UNION OF EMPLOYEES OF POLYTECHNICS,

COLLEGS AND ALLIED INSTITUTION KUEPCAI.....CLAIMANT

VERSUS

MOI TEACHING AND REFERRAL HOSPITAL.....RESPONDENT

JUDGEMENT

The matter is brought to court by a Statement of Claim dated 12th January, 2016. The issue in dispute is therein cited as;

Refusal to Deduct and Remit Union Dues.

The respondent in a Statement of Response filed on 15th April, 2016 denies the claims and pray that the same is dismissed with costs.

The claimant’s case is that the membership incorporates employees of the respondent by virtue of Article III. A, S.1 (a) (i) of its constitution as follows;

Except as otherwise provided for in the Constitution of Kenya, The Labour Relations act, 2007, The Industrial Relations Charter and in this Constitution, any person, without regard to race, creed, colour, sex, age, political or religious beliefs and such persons who meet the requirement hereafter shall be eligible for membership in a union branch duly chartered by Kenya Union of Employees of Polytechnics, Colleges and Allied Institutions.

a) Staff employees of Tertiary (Polytechnics, & Colleges), Schools and Education Centres.

i) Polytechnics i.ed Public, Provincial, District, Divisional, Village, Youth, Technical, Teaching and Referral Training Institutes, Education and YMCA/YWCA Centres.

ii)

iii)

It is her further case that in the months of November and December, 2014, February and July, 2014, she

recruited 66 employees of the respondent through check-off and this was forwarded by letters dated 15th December, 2014 and 10th and 21st July, 2015 respectively that did not comply thereby forcing the claimant to report a labour dispute but this failed due to non attendance of conciliation meetings by the respondent. This is as follows;

THAT, the Claimant herein has been duly prejudiced by the Respondent's unbridled actions of impunity and its blatant violation of Section 48 (3) & (6) of The Labour Relations Act, No. 14 of 2007, Section 19 (g) of The Employment Act, No. 11 of 2007, Laws of Kenya, ILO Convention No.87 and Article 36 and 41 of The Constitution of Kenya.

She prays as follows;

1. ***THAT***, the Check-off forms as duly signed by the sixty-six (66) employees of the Respondent acknowledging union membership of the Claimant herein dated 15th December, 2014 and 10th & 21st July, 2015 respectfully, meets the legal requirements of Section 48 (2) of The Labour relations Act, No. 14 of 2007, Laws of Kenya.

2. ***THAT***, the Respondent do comply in full with the provision of Section 48 (3) of The Labour Relations Act, No.14 of 2007, Laws of Kenya, with regard to deduction of trade union dues forthwith.

3. ***THAT***, the Respondent pays the Claimant herein this suit from its financial kitty all the sum due and owed to the Claimant herein as union dues, which the Respondent would had been deducting and remitting regularly from the sixty-six (66) union members whose names appear on the check-off forms dated 15th December, 2014, and 10th & 21st July, 2015 respectively forthwith.

4. ***THAT***, the Respondent in guilty of an offence under Section 82 (2) of The Labour Relations Act, 2007, and therefore is convicted for infringing Section 48(3) of the Act, to pay a fine of forty thousand shillings.

5. ***THAT***, the Director of the Respondent is guilty of an offence under Section 82 (3) of The Labour Relations Act, 2007, and is convicted for infringement of Section 48 (3) of the Act to pay a fine of ten thousand shillings.

6. ***THAT***, the Respondent pays interest at paragraph 3 hereinabove at the prevailing commercial rates to the Claimant herein, forthwith.

7. ***THAT***, costs of this suit be provided for by the Respondent.

8. ***THAT***, any other and better relief deemed fit to grant be granted.

The respondent's case is that the claimant is not the right union for her employees and that there is a rival union, Kenya Union of Domestic Hotels Educational Institutions, Hospitals and Allied Workers, KUDHEIHA, representing all of them. She doubts the claim to recruitment as alleged by the claimant. She puts it as follows;

6. *The respondent further avers that effecting deductions on the said employees will affect the existing Collective Bargaining agreements with the rival unions (KUDHEIHA)*

7. *That respondent further avers that the claimant is encroaching on the rival union members (KUDHEIHA) and in any case the claimant will not cater for the said employees needs.*

8. *The respondent further avers that the instant suit is fatally defective and has been filed with malice and intended to bring confusion among the respondents employees.*

9. *The respondent will at the opportune time seek to have the suite dismissed for being an abuse of*

court process and the claimant is hereby notified.

In the course of this proceedings and particularly on 13th May, 2016 KUDHEIHA was joined as a Interested Party in this cause.

The issues for determination therefore are;

1. Whether the claimant raises a substantive case of lack of collection of union dues by the respondent.
2. Whether the claimant is entitled to the relief sought.
3. Who bears the cost of this suit.

The 1st issue for determination is whether the claimant raises a substantive case of lack of collection of union dues by the respondent. The claimant unions constitution allows recruitment of membership from the employee of the respondent. I therefore do not buy the respondent's case and submissions of a rival union in competition with the claimant and therefore failure to deduct union dues as requested by the claimant.

I, however, appreciate the difficulty the respondents find themselves in the midst of contesting rival union's all intent on acquiring membership for their respective institutions. There is no clarity on the issue of recruitment of the 66 members for the claimant union as pleaded. I therefore find that this is not a suitable case for award of orders as prayed. I instead urge the parties to refine and redo the exercise with a view to establishing a case for recruitment and deduction and remission of union dues by the respondent to the claimant respectively.

I am therefore inclined to dismiss the claim with orders that each party bears their own costs of the claim. And this answers all the issues for determination.

Delivered, dated and signed this 26th day of April 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Japhet A. Agura for the Claimant Union.
2. Mr. Joseph Okwach for the Interested Party.
3. Mr.Kirima for the Respondent.