



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 19 OF 2017**

**KENYA ENGINEERING WORKERS UNION**

**CLAIMANT**

**v**

**ALUMINIUM KENYA LIMITED**

**RESPONDENT**

**RULING**

1. The Kenya Engineering Workers Union (Union) in a motion filed in Court on 3 February 2017 seeks
  1. ...
  2. ...
  3. THAT, interim Orders be issued against the Respondent to comply with Section 48 of the Labour Relations Act 2007 by way of deducting and remittance of union dues till the hearing and determination of this suit.
  4. THAT, the Honourable Court deem fit to issue interim orders against the Respondent from victimizing the Applicant members on ground of Trade union activities/affiliation and or on the basis of this suit pending the hearing and determination of this suit.
  5. THAT, this Honourable court do allow the parties to proceed by way of written submissions to dispose of the main suit.
2. On 24 February 2017, the Court directed that the motion be served upon the Respondent for *inter partes* hearing on 20 March 2017.
3. Because the Respondent had not file a response to the application by the scheduled date, and the Court was not satisfied with the service, the motion was rescheduled to 12 April 2017 for hearing.
4. On 12 April 2017, the application was again rescheduled for hearing on 24 April 2017.
5. On 24 April 2017 when the motion was called out, the Respondent was absent/not represented. On record was an affidavit of service attesting that the Respondent's Managing Director had been served on 18 April 2017.
6. There was also on record a Notice of Appointment of Advocates by Ikua, Mwangi & Co. Advocates.
7. The Court therefore allowed the application to be urged by the Union in the absence of the Respondent.

8. What the Union is seeking is essentially an order directing the Respondent to commence deduction of union dues from its employees who have joined the union and remit the same to it.
9. It is not in dispute that the parties entered into a recognition agreement on 7 September 2015.
10. However, according to the Union, the Respondent had declined to comply with the provisions of section 48 of the Labour Relations Act as regards union subscriptions despite being served with Form S (check-off forms).
11. The Union therefore reported a trade dispute to the Cabinet Secretary responsible for Labour and a Conciliator was appointed, but no resolution was reached and the Conciliator recommended that the dispute be taken to Court.
12. Before deducting and remitting union subscriptions from employees who have joined a Union, section 48 of the Labour Relations Act require certain conditions to be complied with.
13. The check-off forms forwarded to the Respondent disclose that the Cabinet Secretary issued a requisite order through Gazette Notice 1698 of 1995 on 31 March 1995.
14. The check-off forms also indicate the requisite bank account into which the union dues should be paid.
15. The check-off forms were forwarded to the Respondent over 3 years ago.
16. The Respondent has not placed any material before Court to deny that it did not receive the check-off forms from the Union.
17. In fact, the existence of a recognition agreement demonstrates that the Respondent employs more than 5 members of the Union.
18. The Court is therefore satisfied that the Union has fulfilled the conditions envisaged under section 48 of the Labour Relations Act.
19. Even if the Union had not fulfilled the conditions required by section 48 of the Labour Relations Act, the Court would have still found for the Union under the common law, as now codified in the Employment Act, 2007.
20. Under the common law, an employee was free to dispose of his wages in any way he deemed fit.
21. This position has now been given statutory underpinning in section 17 (11) of the Employment Act, 2007. The provision provides that

No employer shall limit or attempt to limit the right of an employee to dispose of his wages in a manner which the employee deems fit, nor by any contract of service or otherwise seek to compel an employee to dispose of his wages or a portion thereof in a particular place or for a particular purpose in which the employer has a beneficial interest whether direct or indirect.

22. This statutory right of an employee to dispose of his wages as he deems appropriate is given further force by section 19(1)(g) of the Employment Act, 2007 which creates a positive duty upon an employer to deduct such part of an employee's wages as the employee may request the employer in writing to deduct. An employer may only suffer the administrative burden/cost of transferring the money to a third party but no other prejudice at all.
23. When the Respondent's employees signed the check-off forms, they were giving the Respondent written instructions to deduct and remit to the Union certain sums of monies from their wages.

24. The Respondent had no otherwise but to oblige with those instructions. It did not suggest that any of the employees who signed the check-off forms had resigned from the Union.

25. The Respondent's conduct so far appears to be directed at stifling the employees from enjoying their constitutional rights to associate and to fair labour practices because it has not complied with the written instructions of the employees who signed the check-off forms way back in 2013.

26. On the question of victimisation of employees who had joined the Union, the Union did not provide any evidence that the Respondent had victimised any of its members.

### **Conclusion and Orders**

27. The Court will therefore allow the motion and order as follows

(a) THAT an Order do issue against the Respondent to comply with Section 48 of the Labour Relations Act 2007 by way of deducting and remittance of union dues effective 30 July 2017.

(b) On failure to comply with order (a), herein, the Respondent to pay the subscriptions from its own resources backdated to February 2017 when the Cause was filed.

28. Costs to abide hearing of the Cause.

**Delivered, dated and signed in Nakuru on this 20<sup>th</sup> day of July 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Mr. Makale, Industrial Relations Officer

For Respondent Ikua, Mwangi & Co. Advocates (did not appear during hearing of application)

Court Assistant Nixon