REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

CAUSE NO. 189 OF 2017

(Originally Nakuru Cause No. 351 of 2017)

KENYA NATIONAL UNION OF NURSES **CLAIMANT**

v

COUNTY PUBLIC SERVICE BOARD,

UASIN GISHU COUNTY GOVERNMENT **RESPONDENT**

RULING

1. The Kenya National Union of Nurses (Union) brought an application against the County Public Service Board, Uasin Gishu County Government (Respondent) on 17 July 2017 seeking

> 1. …
>
> 2. **THAT**, pending the hearing and determination of this Application and main suit, this Honourable Court be pleased to issue an **Interim** Order directing the Respondent and/or its agents to remit all the deducted and unremitted union dues from the duly registered members of the Claimant with effect from MARCH, 2017 to date **with immediate effect** into the Claimant's authorised Bank Account at Co-operative Bank and whose details are:
>
> ***Kenya National Union of Nurses***
>
> ***Bank; Co-Operative Bank***
>
> ***Branch; Aga Khan Walk,***
>
> ***Account Number; 01120309515200.***
>
> 3. **THAT**, pending the hearing and determination of this Application and the main suit, this Honourable Court be pleased to issue an **interim Order** restraining the Respondent and/or its Agent from remitting of Union Dues from the Claimant/Applicant members to **ANY UNDISCLOSED BANK ACCOUNT**.
>
> 4. **THAT**, pending the hearing and determination of this Application, this Honourable Court be pleased to issue an **Interim Order** directing the Respondent to pay ALL the unremitted Union Dues to the Claimant's Account as prescribed in the Forms **''S''** duly served upon it from its **OWN**

> **FUNDS** as provided for under Sec. 19(6) of the Employment Act, 2007 Laws of Kenya and with immediate effect. 5. **THAT,** pending the hearing and determination of the main suit, this Honorable Court be pleased to issue an ORDER restraining the Respondent and/or its Agent from harassing and/or intimidating the Claimant's members on the basis of this litigation.
>
> 6. …
>
> 7. …

2. When the motion was placed before Court on 17 July 2017 in Nakuru, the Court directed that it be served upon the Respondent for *inter partes* hearing on 27 July 2017 in Eldoret.

3. The motion could not proceed on 27 July 2017 because Mr. Kenei for the Respondent had not had sufficient time to file a response, and he also sought for time to explore an out of court settlement.

4. The Court scheduled mention for 29 September 2017 but on that date, the Respondent was not represented, and the Court fixed the motion for hearing on 31 October 2017.

5. Instead of filing grounds of opposition to the motion, the Respondent opted to file a Preliminary Objection in the following terms

> 1. The Honourable Court is not vested with the requisite primary jurisdiction to hear and determine the matter in view of the provisions of clauses 3(c) and (d) of the Recognition Agreement dated 14th December, 2016 between the parties herein.

6. The Court allowed the motion to procced on 31 October 2017 and the preliminary objection was taken as grounds of opposition.

7. The Court has considered the motion, supporting affidavit, preliminary objection and oral submissions made by the parties.

8. In the view of the Court, the motion cannot succeed because of the following 3 reasons.

9. One, the orders sought in the motion are an exact replica of the prayers sought in the substantive Cause and therefore granting the orders at this stage would dispose of the Cause without a hearing it on the merits.

10. Two, although the parties have a Recognition Agreement, the Union did not disclose to Court the bank account which was Gazetted by the Cabinet Secretary for Labour as required by section 48 of the Labour Relations Act (the Union in an unprecedented practice filed copies of the Gazette Notice and previous court orders on 3 November 2017, and being an issue of evidence the Court will not consider the documents).

11. The Court cannot presume that because deductions had been previously made, the same were remitted to the Gazetted bank account.

12. Three, the Union did not present any evidence to remotely suggest that the Respondent had threated or harassed any of its members on the basis of this litigation.

13. However to preserve any monies deducted from the employees due to the Union (Mr. Kenei informed the Court from the bar the deductions were being remitted to the Union's branch office bank account without providing any statutory basis for the same), the Court orders that the Respondent continue to make the deductions but keep the same in a suspense account until the hearing and determination of the Cause.

14. Before concluding, the Court once again implores the parties to attempt an out of court settlement in

good faith.

ORDERS

15. In the circumstances, the Court dismisses the motion with no order to costs and further gives the following directions to ensure an expedited hearing of the Cause

(i) Respondent to continue making deductions but keep the same in a suspense account until hearing and determination of the Cause.

(ii) Respondent to file and serve its Response, witness statements and documents on or before 8 December 2017.

(iii) Union to file any Reply, if need be within 14 days of service of Response.

(iv) Agreed Issues to be filed before 19 January 2018.

(v) Mention date for further directions to be taken in the Registry.

16. Costs in the Cause.

Delivered, dated and signed in Eldoret on thus 24th day of November 2017.

Radido Stephen

Judge

Appearances

For Union Mr. Karakacha, Industrial Relations Officer

For Respondent Mr. Kenei instructed by Gumbo & Associates

Court Assistants Nixon/Etyang