

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 823 OF 2016

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS.....CLAIMANT

VERSUS

KIAMBAA DIARY FARMERS CO-OPERATIVE

SOCIETY LIMITED.....RESPONDENT

RULING

1. Pursuant to an application by the Claimant dated 10th May 2016, my brother **Nzioki wa Makau J** granted an *ex parte* order directing the Respondent to deduct and remit union dues to the Claimant Union. The Respondent subsequently came to court seeking the setting aside of the *ex parte* order and an opportunity to defend the Claimant's application.

2. By a ruling delivered on 14th defend the application. The October 2016, I allowed the Respondent do parties filed written submissions on the

Claimant's application which came up for highlighting on 16th March 2017. The Respondent submitted that the obtaining union membership was unclear as some employees had expressed their intention to leave the Union. Counsel for the Respondent however indicated that the Respondent was ready to start deducting and remitting union dues on account of nineteen (19) employees whose membership was clear.

3. The Court therefore made the following order:

“The Respondent is directed to deduct and remit union dues on account of the agreed list of 19 employees. Matter to be mentioned on 19th July 2017.”

4. Following the Respondent's failure to comply with this order, the Court summoned its Manager, Daniel Kinyanjui Njenga to explain why the order had not been complied with. When Njenga appeared before the Court on 28th September 2017, he drew attention to a letter dated 9th June 2017 signed by the Respondent's Human Resource Officer, Njeri Mbugua M, notifying the union members that deduction of union dues would commence in the month of June 2017. The letter invited any questions and clarifications.

5. In response to this letter, many employees wrote letters withdrawing their union membership. The Claimant submits that by writing the letter dated 9th June 2017, the Respondent not only defied the court order of 16th March 2017 but also interfered with the employees' right to participate in the activities of a union of their choice.

6. The Court had occasion to examine both Daniel Kinyanjui Njenga and Njeri Mbugua M on oath and concluded that their actions prevented enforcement of the court order issued on 16th March 2017. The Court however formed the opinion that the actions by the two officers were informed by ignorance rather than open defiance. In light of this I make the following orders:

- a) Daniel Kinyanjui Njenga and Njeri Mbugua M are hereby reprimanded for preventing enforcement of the order of this Court issued on 16th March 2017;
- b) The Respondent is directed to facilitate the Claimant Union to meet with the Respondent's unionisable employees for purposes of conducting fresh recruitment;
- c) The Respondent will pay the costs of this application.

7. These are the orders of the Court.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF DECEMBER 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Owiyo for the Claimant

Mr. Gachomo for the Respondent