



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 329 OF 2015

**KENYA ELECTRICAL TRADE
& ALLIED WORKERS UNIONCLAIMANT**

v

GEOHERMAL DEVELOPMENT COMPANY.....RESPONDENT

RULING

1. For determination is a motion by the Claimant Union dated 30 October 2015, and seeking

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3. That this Honourable court do issue orders directing the Respondent to commence deduction and remittance of union dues from their employees who have already acknowledged membership with the Claimant/Applicant.

4. That this Honourable Court do issue orders restraining the Respondent its servants, employees and/or agents **from victimizing, intimidating, coercing, harassing, terminating,**

dismissing or disciplining on account of their Union membership the Unionisable employees and the Claimant members.

5 That this Honourable Court do issue orders directing the Respondent to sign Recognition Agreement in accordance with section 54 of the Labour Relations Act, 2007.

6.

2. The Respondent filed a replying affidavit opposing the motion on 20 November 2015, and this prompted the Claimant union to file a further affidavit through its Deputy Secretary General on 4 December 2015.

3. The motion was taken on 15 December 2015.

Recognition dispute

4. Order 5 seeking an order directed to the Respondent to enter into a recognition agreement with the Union cannot be granted at the interlocutory stage and therefore the Court will not examine it in this ruling.
5. In any case, the Union reported a trade dispute to the Cabinet Secretary, Labour in respect to the issue and the same is still pending before a Conciliator who has not issued a certificate of unresolved dispute.

Harrasment of union members

6. The Union did not demonstrate that any of its members had been harassed on account of their union membership through the affidavits and this order is therefore declined.

Deduction of union dues

7. The Union recruited the Respondent's employees and submitted to it Form S (check-off forms) from around 23 December 2014 to 30 January 2015.
8. The parties exchanged correspondence and thereafter held a meeting on 19 January 2015. Certain agreements were made during the meeting.
9. However, it appears that the Respondent did not commence deduction of union subscriptions.
10. The Respondent's main reasons for not commencing the deductions appear to be that it needs to verify and validate its employees listed in the check-off forms; that it cannot commence union deductions before a collective bargaining agreement is agreed upon and the dispute was still under conciliation.
11. 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.
12. The only condition the Union had to satisfy are those outlined in section 48 of the Labour Relations Act and the Respondent did not remotely suggest the Union had not fulfilled them.
13. Conclusion of a collective bargaining agreement is not one of the preconditions for deduction of union dues. Legally, deduction of union dues comes before, and becomes enforceable even before conclusion of a collective bargaining agreement.
14. The Respondent had no other choice 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.
15. 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.
16. The Respondent has had since January 2015 to verify or validate the list of employees who appended their signatures to the check-off forms. The time has been more than sufficient.
17. Under the common law, an employee was free to dispose of his wages in any way he deemed fit.
18. 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.

19. 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 prejudice at all.
20. In the view of the Court, the Union has demonstrated that prayer 3 of the motion is merited and

the Court grants the prayer and further orders that the deductions be commenced with effect from March 2016. Should the Respondent fail to comply, it should meet the dues from its own resources.

21. The Court further orders that the parties pursue the ongoing conciliation in respect to the dispute concerning recognition agreement and towards this end the Conciliator be at liberty to conduct a ballot to establish whether the Union has recruited a simple majority of employees as envisaged by section 54 of the Labour Relations Act.
22. This Cause will be stayed for 45 days pending conclusion of the conciliation in respect to the issue of recognition agreement.
23. Claimant to have costs of the motion.

Delivered, dated and signed in Nakuru on this 26th day of February 2016.

Radido Stephen

Judge

Appearances

For Union	Mr. Onyony, instructed by Onyony & Co. Advocates
For Respondent	Ms. Khisia instructed by Kangethe & Mola Advocates
Court Assistant	Mwangi