



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 2045 OF 2015

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 15TH APRIL, 2016)

KENYA NATIONAL PRIVATE SECURITY WORKERS UNIONCLAIMANT/APPLICANT

VERSUS

LAVINGTON SECURITY LIMITEDRESPONDENT

RULING

1. Before the Court is a Notice of Motion dated 17th November 2015 seeking orders:

1. ***That Pending the hearing and determination of the motion inter-parties, the Honourable Court do issue an interim presevatory order to stop the Respondent from victimizing, harassing or coercing, intimidating or otherwise dismissing or terminating any union members whose names appear in the check off system.***
2. ***That pending the hearing and determination of the motion herein this Honourable Court to compel the Respondents to deduct union dues from all the unionasable employees who have signed the check off systems therefore acknowledging membership and remit the money so deducted to the Claimant's gazette account.***
3. ***That pending the hearing and determination of this motion, the court be pleased to direct and order the Respondent to allow workers to join the Union of their choice voluntarily.***
4. ***The Respondents to bear the costs of this application.***

2. The application is supported by the annexed affidavit of Isaac G.M Andabwa and is based on the following grounds:

1. ***That the claimant is entitled by the Labour Relations Act to recruit employees of the Respondent into Union Membership.***
2. ***The Claimant did recruit at least more than five employees and is still recruiting employees of the Respondent into Union Membership by means of check – off within the meaning of the mandatory provisions of Section 48 of the Labour Relations Act.***
3. ***The Respondent on receipt of the check off forms from the Claimant has neglected, failed and or refused to deduct or remit form members whose names appear on the check off lists.***
4. ***The Respondent is already victimizing its employees who are union members for joining the***

union.

5. ***The Respondent herein has acted in total violation of the Constitution particularly with respect to denying participation of its employees in the affairs of the Union as provided under Article 41 and the enabling laws in the Labour Laws of Kenya.***
3. The Claimant submits that on or about the September to November 2015, they recruited more than 900 employees of the Respondent into the Union by means of a check – off system as provided for under Section 48 of the Labour Relations Act which they sent to the Respondent for deduction to the gazetted Union Account.
4. The Respondent failed to remit the dues and instead issued questionnaires to the employees asking whether or not they were members of the Union. They summoned two guards and transferred a lady whose name appeared on the check off list as well as intimidation and victimization of those who have joined the Union.
5. The Claimant further states that the respondent is in violation of Articles 36 and 41 of the Constitution and Section 4, 5, 6, and 7 of the Labour Relations Act 2007.
6. In conclusion, the Claimant submits that they are entitled to the orders sought.
7. The respondent is opposed to the application and has filed in court a Replying Affidavit sworn by Risper Obure on the 14th of December 2015.
8. They submit that the Claimant had not produced any evidence to back up their claims of having recruited over 900 members and that the Claimant has failed to serve the check off to the Respondent which check off is invalid as it does not contain full details.
9. The Respondent further states that they have not denied any employee from joining the Union nor have they refused to deduct any dues, they are only waiting for the Claimant to furnish them with a check off system. Moreover, they are of the view that the Claimants court case is premature as they have not exhausted all the provisions of Section 48 of the Labour Relations Act.
10. The claims by the Claimant that the Respondent summoned and questioned two guards and a lady on their union membership amounts to introduction of new evidence in the submissions and should be disregarded by the court. They submit that the parties should be bound by their pleadings and rely on the case of **Ng'ang'a & Another vs. Owiti & Another (2008) 1KLR 749** where the court held that “Parties must confine their arguments to the issues raised in their pleadings and that issues not pleaded cannot be introduced by way of submissions.
11. They further state that the letter dated 10th of December 2015 introduced by the Claimant, where they allege that they served the Respondent with the Check – off system is not legitimate as service was only done after the Respondent raised the issue.
12. They state that the claim by the Claimant that they are victimizing some employees has not been proved, material evidence has not been brought before the court to prove the allegations and these should be disregarded by the court.
13. Having considered the submissions of both parties, it is aspirant that Appendix 1 are the check off forms signed by the member union that Applicant has recruited. Appendix 2 is the Gazettee Notice by the then Minister for Labour directing deduction of trade union dues. Under Appendix 6, a trade dispute was reported on this issue of refusing to remit trade union dues and intimidation and victimization of union members and the matter was handled in Court under case No. 70/2002 and 106/2011 where the Applicants were given the mandate to represent workers in the Security Industry.

14. The Respondents deny refusing to remit union dues and victimizing the unionisable employees.

15. They have however not denied receiving the check off forms and have not explained why they have not deducted and made the remittances. It is therefore apparent that the Applicants have established a prima facie case and I find for them and other as per prayer 2, 3 and 4 as follows:

2. *Pending the hearing and determination of this motion inter-parties, this Honourable Court do issue an Interim Presevatory Order to stop the Respondent from victimizing, harassing or coercing, intimidating or otherwise dismissing or terminating and transferring any of the Union members whose names appear in the check off system.*
3. *Pending the hearing and determination of the motion and/or the main case herein this Honourable Court to compel the Respondents to deduct union dues from all the unionisable employees who have signed the check-off forms therefore acknowledging membership and remit the money so deducted to the Claimant's gazette account.*
4. *Pending the hearing and determination of this motion the Court be pleased to direct and order the Respondent to allow workers to join the Union of their choice voluntarily.*

16. Costs be paid by the Respondents.

Read in open Court this 15th day of April, 2016

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Onyancha for Applicant – Present

No appearance for Respondent