



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 905 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 5th April 2016)

UNION OF NATIONAL RESEARCH AND ALLIED

INSTITUTES STAFF OF KENYA (UNRISK) CLAIMANT

VERSUS

KENYA UNION OF COMMERCIAL FOOD AND

ALLIED WORKERS (KUCFAW) INTERESTED PARTY

JUDGMENT OF THE COURT

1. The Claimant filed a Memorandum of Claim dated 19th of May 2015 where they seek the following orders:
 1. *To, compel the Respondent to immediately commence deductions of union dues from their employees who have joined the claimant union through check off forms submitted by the Claimant within one month from the award date.*
 2. *To, respect trade unions rights and that is the Claimants right to recruit and organize the Respondent employees in to the union membership.*
 3. *To respect the right of their employees to belong to a trade union of their choice and to participate in Union activities thereafter.*
 4. *To pay from their own funds union arrears covering the period of January 2013 to April 2015 the total amount of Kshs. 1,804,600/- (one million eight hundred and four thousand six hundred only) to be divided as follows:*
 - i. *Kshs. 1,546,800/- (one million five hundred and forty six thousand eight hundred only) to the Claimant (UNRISK).*
 - ii. *Kshs. 257,800/- (two hundred and fifty seven thousand eight hundred only) to COTU(K) being the total sum they willfully refused to deduct and forward as required, as stipulated in Section 19(6) of the Employment Act, 2007.*

5. ***To continue paying from their own funds the equivalent of monthly union dues contributions from the Claimant members up to the time of check off deductions implementations.***
6. ***To pay a fine of Kshs. 100,000.00 as stipulated in Section 19 (5) of the Employment Act to serve as a warning so as to deter other employers with similar intentions.***
7. ***To pay the costs of the dispute to the Claimant.***

2. The Claimants aver that they are a legally registered trade union with constitutional mandate to represent working interest of the Respondent employees, who were freshly recruited by them after an Employment and Labour Relations Court Ruling in cause No. 30 (N) of 2009.
3. The Claimant further states that they forwarded 10 check off forms containing 185 new members who had acknowledged membership to the Claimant for union dues deductions to be effected from January, 2013, however, they reported a trade dispute with the Minister on the 5th of July 2012 under Section 62 of the Labour Relations Act 2007 when they realized the Respondent was unwilling to corporate.
4. A Conciliator was appointed and several meetings were conducted, but parties failed to reach a settlement, and the Conciliator gave his recommendation that the parties ought to move to the Industrial Court for final arbitration.
5. The Claimants state that the Respondents have continued to disobey the law as outlined in Section 48 of the Labour Relations Act, 2007, Section 19 (1)(a)(f) and (g) and (4) of the Employment Act 2007.
6. They have written to the Respondent on several occasions that is on the 9th of April 2014, 30th of July 2014, and 8th of December 2014 demanding for their dues. Moreover, on the 27th of March 2015, the Claimant forwarded to the Respondent check – off forms containing a total of 144 newly recruited members for union dues deductions bringing the total recruited Claimants members to 323.
7. The Respondents in their submission stated that they did not submit any dues to the Claimant as they did not recognize them. They already had in place a Collective Bargaining Agreement and recognition agreement with Kenya Union of Commercial, Food and Allied Workers, (KUCFAW) the interested party in this matter.
8. They reiterate that they do not favour any union and will work with any that meets the criteria set out under the Provisions of the Labour Relations Act, 2007 by recruiting a simple majority of unionisable employees and also by having the current employees enrolled with the interested party withdrawing membership from them.
9. They aver that the Conciliator ought to facilitate smooth running of the business by ensuring that only one union at a time is allowed to represent employees and not two which would result in chaos and confusion at the work place as well in the negotiation and conclusions of Collective Bargaining Agreements.
10. They further submit that no gazette order had been produced by the Claimant directing them to pay Union dues to the Claimant in accordance with Section 48 of the Labour Relations Act.
11. In conclusion they submit that the prayers sought are not available and cannot be issued by this Honourable Court and the entire claim is in breach of the legal procedures and the law.
12. The Interested Party on their part submit that the check off forms presented by the Claimant have presented various anomalies as some of those who have purported to sign the forms have retired from employment, in management, not employed at the time the check off sheets were allegedly signed while others were deceased.

13.They further state that the Claimants had previously sought recognition and failed but changed tact into demanding payment of dues from the same set of employees paying to the Interested Party. While the employees do have freedom of association as envisaged by Article 36 & 41 of the Constitution the Claimants rights to recruit must not infringe and interfere with the right of the Interested Party as a trade union.

14.The Interested Party further states that the Claimant failed to produce revocation forms or sworn affidavits to the claim in which employees of the Respondent have revoked their membership with the Interested Party in order to join the Claimant Union.

15.They pray that the Court issues the following orders:

- i. ***A declaration that the Claimants intention is an act of interference in an institution adequately covered by Interested Party***
- ii. ***A declaration that the same set of employees cannot be represented by two unions at the same time***
- iii. ***An Order dismissing the claim in totality as bad in law and an abuse of the Court Process***
- iv. ***A declaration that the Claimant has no formal relationship with the Respondent and must cease forthwith communication with the Respondent as such is an act of interference.***
- v. ***An order directing the Claimant to pay costs of this suit in favour of the interested party***
- vi. ***Any other relief and/or order the court may make and grant to meet the ends of justice.***

16.Having considered the submissions of both parties, I find issues to determine being whether the Claimants are entitled to prayers sought.

17.To answer this question, I refer to Article 41 of the Constitution which deals with a right to form and participate in activities of a trade union.

18.From this position therefore, any person who has authorized the Claimant to have their union dues deducted, cannot be faulted and the Respondent cannot stand in the way nor the Interested Party.

19.However, under Section 48 of Labour Relations Act:

1. ***“In this Part “trade union dues” means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.***
2. ***A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to:-***
 - a. ***deduct trade union dues from the wages of its members; and***
 - b. ***pay monies so deducted:-***
 - i. ***into a specified account of the trade union; or***
 - ii. ***in specified proportions into specified accounts of a trade union and a federation of trade unions.***
3. ***An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee’s wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.***
4. ***The Minister may vary an order issued under this section on application by the trade union.***
5. ***An order issued under this section, including an order to vary, revoke or suspend an order, takes effect from the month following the month in which the notice is served on the employer.***

6. *An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.*
7. *A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.*
8. *An employer shall forward a copy of any notice of resignation he receives to the trade union.*

20. The Claimants are therefore expected for good order to have the Minister issue an order directing employer to deduct union dues. The Claimant have not shown that this has been complied with and therefore it is premature for the Claimant to seek the orders they so seek.

21. I therefore dismiss the Claimants claim in totality and order them to follow proper channels including resettlement, recognition etc before proceeding further.

22. It is so ordered.

Read in open Court this 5th day of April, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Lawrence for Claimant Union

Taco for Interested Party