



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT KISUMU
CLAIM NO.216 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

KENYA CHEMICALS AND ALLIED WORKERS UNION.....CLAIMANT

-Versus-

FORM MATTRESSES LTD.....RESPONDENT

J U D G E M E N T

The Claimant a Trade Union Registered in Kenya to represent employees working in chemical and allied industries filed this suit alleging refusal by the Respondent to deduct and remit union dues to the Claimant. In the Memorandum of Claim filed on 26th August, 2014 the Claimant states that it has a recognition agreement with the Respondent whose core business is manufacture of form mattresses at its business premises situated at Otonglo Market in Kisumu County.

The facts of this case are not in contention. The Claimant recruited a total of 123 employees of the Respondent and forwarded the check-off forms (Appendix 5 of the Labour Relations Act) to the Respondent for purposes of deduction of Union dues. The check off forms were in several sets. The first one containing 4 names is dated 26th November 2011, the second one is dated 31st January, 2012 and contains 109 names. It was forwarded to the Respondent by the Claimant's letter dated 6th February, 2012. The 3rd is dated 6th May, 2012 and contains 2 names. It was forwarded to the Respondent by the claimant's letter dated 6th May, 2012. The 4th is dated 20th July, 2012 and was forwarded to the Respondent by the Claimant's letter of the same date. It had 8 names.

The Respondent declined to deduct union dues from the said employees even after informal discussions with the union's representatives. The Respondent's reason for not deducting union dues was that the employees were not in permanent employment.

The Claimant reported a trade dispute to the Minister for Labour on 18th March, 2013 and Mrs.Hellen Maneno of Kisumu County Labour Office was appointed as conciliator.

The conciliator invited the parties for a conciliation meeting but the Respondent failed to attend. The Respondent also failed to submit their Memorandum to the conciliator as advised by both the Minister's letter appointing the conciliator and in the conciliator's letter inviting the parties for a conciliation meeting on 25th July, 2013. On the date of the meeting the Respondent's Managing Director promised to meet the union officials to resolve the matter but failed to do so forcing the conciliator to prepare her report without the input of the Respondent.

In the report the conciliator recommended that the Respondent effects the deduction of union dues as the law does not bar any employee from joining the union. When the Respondent had not complied with the conciliator's report after 4 months the Claimant filed this suit.

The Respondent in its Memorandum in defence to the Claim states that section 48(1) defined trade union dues to constitute only regular payments from the union and does not include payments from temporary employees.

The Respondent thus does not deny that the union recruited a total of 123 employees. Its only reason for not deducting and remitting union dues from the said employees is that they are not in permanent employment.

The issue for determination is whether or not temporary employees can become union members and whether an employer can be compelled to deduct union dues through check-off.

The Claimant relied on Article 36(1) which provides for freedom of Association and on Article 41(2)(c) which provides for the right of an employee to form, join and participate in activities of a trade union. The Claimant further relied on section 50 of the Labour Relations Act which provides for deduction of union dues by employers.

The Respondent argues that it has not breached any law as there is no provision for deduction of union dues from employees who are paid on a daily basis. Section 48(3) of Labour Relations Act provides for deduction and remittance of union dues as follows:-

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.

Labour Relations Act Section 48(6) provides that 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.

My understanding of section 48(3) as read together with section 48(6) is that an employer has no control whatsoever over the decision of an employee's decision to have union dues deducted from his salary and remitted to a union of his choice.

The reference to employees does not exclude a casual employee as submitted by the Respondent. The definition of "trade union dues" also does not exclude a casual employee.

The Respondent has also not contested the Claimant's contention that the employees affected by this case have worked for the Respondent for long periods exceeding then(10) years and cannot fit into the definition of casual employee, or the claimant's contention that the terms of employment of the said workers converted to "permanent" status by dint of section 37 of the Employment Act.

In cause No.1181 of 2011 between **Chemical and Allied Workers Union v Bamburi Cement Limited**, Rika J stated that an employee can require an employer to deduct and remit union dues under sections 19(1) (f) and 19(1) (g) which provide that:-

(f) any amount the deduction of which is authorised by any written law for the time being in force, collective agreement, wag determination, court order or arbitration award;

(g) any amount in which the employer has no direct or indirect beneficial interest, and which the employee has requested the employer in writing to deduct from his wages;

In that case Justice Rika ordered that the Employer pays Union dues to employees who were not unionisable but had signed check-off forms. He directed that the issue of whether or not they can enjoy

the benefits in the CBA between the employer and the union be discussed at a different forum.

The Claimant also referred to the **Cause Number 790 of 2011; Kenya Chemical and Allied Workers Union v Mombasa Cement Limited & Kenya Quarry and Mine Workers Union** as interested party. The issue in dispute in that case was like in the present case, the refusal of the employer to deduct union dues. The Respondent's reason was that the Respondent had a recognition agreement with a different union. The court directed the Respondent to deduct union dues from the employees who had signed the check off forms and remit to the claimant. The court observed that both Articles 41(2)(c) of the constitution and section 4(1) of the Labour Relations Act, guarantee freedom of association to every employee and this is signified by an employee signing a check-off form.

In the present case, the Respondent's only reason for refusing to deduct union dues is that the employees are not permanent. That is not a valid reason for not deducting union dues. In any event, the employees are not casuals as they have worked for longer than one month continuously going by the Claimant's allegation which the Respondent has not denied.

I find no reason to deny the employees their constitutional right to become members of a union.

I hereby order that the Respondent deducts and remits to the Claimant Union dues from all the employees who have signed the check-off forms.

Dated, signed and delivered this 26th day of May, 2016

MAUREEN ONYANGO

JUDGE