



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 999 OF 2011

(Before Hon. Lady Justice Hellen S. Wasilwa on 13th July 2016)

KENYA HOTELS AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

SUNSET LIMITED HOTEL.....RESPONDENT

KUDHEIHA WORKERS.....INTERESTED PARTY

JUDGMENT OF THE COURT

1. The instant suit filed by the Claimants seeks for prayers that the Honorable Court deem fit to order the Respondent to stop deduction of union dues/agency fee towards Kudhieha; that the Respondent only deduct COTU dues once monthly; that the Respondent continue with monthly deduction of members of the Claimant as per the check off forms and remit the same to the Claimant union and costs the suit.
2. The Claimants aver that the parties herein signed a recognition agreement after an amicable conciliation process of the Ministry of Labour in a trade dispute ML/IR/56/51/2010 annexed to the Claim as Appendix 2. They further aver that the employees of the Respondent joined the Claimant union in June 2010 and the management started deduction of union dues in August 2010.
3. It is the Claimants' contention that the parties entered into negotiations but there was disagreement at which point the Respondent decided to victimize its members by deducting double union dues. The Claimants state that these actions by the Respondent are in violation of Section 48 of the Labour Relations Act, 2007 and also in violation of previous awards of the Court.
4. The Respondents put in a Reply to the Memorandum of Claim wherein they state that they are members of Kenya Hotel Keepers and Caterers Association which has negotiated and signed an agreement with the Kenya Union of Domestic Hotels Educational institutions, Hospitals and Allied Workers (KUDHEIHA) on behalf of the Respondent which was signed on 21.06.2010 and was to come into effect on 1st July, 2010, for a period of two years.
5. The Respondent contends that this position had been communicated to the Claimant through a letter annexed to their Response as Appendix III and as such was aware that there was an already existing agreement with KUDHEIHA and their disregard of the same was the genesis of the instant dispute.
6. The Respondent further contends that the Claimant had no authority to bind the employees of the

Respondent into an agreement of recognition which in any event was un-witnessed and further that majority of their employees have indicated their intention to remain members of KUDHEIHA. In support of this contention they refer to Appendix 4 of their documents accompanying the Response.

7. The Respondent submits that its manager had no authority to enter into any collective agreement on behalf of unionized employees as there was already an existing collective agreement. They submit that the Claim lacks merit and ought to be dismissed.

8. KUDHEIHA filed a Replying Affidavit and a Memorandum of Response in which they admit the relationship between the Respondent and themselves. They further state that the orders sought have been overtaken by events and the Application is a waste of judicial time as the Court has previously pronounced itself on the matter in **Petition 5 of 2013 between Kenya Hotels and Allied Workers Union Vs The Honourable Attorney General & 3 Others**, where it was held that:

“Section 48 and 49 are not mutually exclusive. One is for payment of Union dues by members of a trade union and the other for payment of agency fees by non-members benefitting from a Union CBA. The law does not suggest that the two cannot be charged at the same time. Article 41 does not suggest that freedom of Association should be free of charge nor does it suggest that payment of agency fees is interference with freedom of Association”.

9. The Interested Party prays for the Claim to be dismissed with costs.

10. Having considered the submissions of both parties, my understanding here is that the Claimants are contesting the deduction of agency fees towards KUDHEIHA and that the Respondent should now only deduct monthly deductions to them.

11. The Claimant contends that they have the check off forms signed by their members which Respondents have refused to honour but instead continue deducting agency fees towards KUDHEIHA.

12. There is proof that the Claimant and the Respondent have a recognition agreement signed on 21.1.2011 (Appendix 2). There is also proof that the Claimants have submitted check off forms of their members who have joined the Union and so deduction of monthly union dues should be ongoing.

13. From Appendix 3, the payslips displayed, the workers are being deducted double – the dues to KUDHEIHA and dues to KHAWU and also to COTU. This is what the Claimants contend is double deduction which they ask this Court to stop.

14. The KUDHEIHA on their part insist that they have a Collective Bargaining Agreement with the Respondents hence the deductions.

15. The question then this Court needs to resolve is who between the Claimant and KUDHEIHA should receive union dues/agency fees.

16. Section 48(6) of Labour Relations Act states as follows:

“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”.

17. In this case, the Claimants have displayed check off forms dated December 2014. This is proof of membership by the members who have so indicated to be members of the Claimant union.

18. In this respect and following the decision of my brother and sister in **Pet No. 5 of 2013 Kenya Hotels and Allied Workers Union vs. The Hon. Attorney General & 3 Others**, those who have signed the check off forms should have their union dues deducted and remitted to the Claimant.

19. There cannot be deduction of agency fees in the same vein when a person has opted for a union

recognized by his employer and still have agency fees deducted to another union. This is double deduction which is a forced deduction for agency fees.

20. In this case, I find Claimants have established this case and I order that union dues be deducted only to the Claimant in respect of the check off forms submitted and not in respect of agency fees towards KUDHEHIHA.

21. The costs of this cause to the Claimants.

Read in open Court this 13th day of July, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Simiyu for Claimant – Present

No appearance for Respondent