



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 414 OF 2013

TRANSPORT WORKERS UNION (K).....CLAIMANT

v

LOCHAB BROTHERS LIMITED.....RESPONDENT

RULING

1. The Transport Workers Union (K) (Union) commenced legal proceedings against Lochab Brothers Ltd (Respondent) on 28 November 2013 and the issue in dispute was stated as *failure and or refusal to sign recognition agreement*.

2. The Respondent filed its Memorandum of Response on 25 February 2014 and hearing was fixed for 18 March 2014.

3. The Union made oral submissions on that date while the Respondent called 1 witness who testified and was cross examined on 25 March 2014.

4. After hearing the parties, Ongaya J in a judgment delivered on 28 March 2014, and a decree in the following terms was issued

1. A declaration that the respondent shall comply with the provisions of sections 48, 50 and 54 of the Labour Relations Act, 2007.

2. THAT the Respondent to pay to the Claimant the accrued and unpaid monthly union dues from their own funds in accordance with the provisions of section 19(6) of the Employment Act, 2007 effective December, 2010 to end April 2014 and to pay by 1.05.2014, failing, interest to be payable at court rates from the date of the judgment till full payment.

3. THAT the respondent to deduct and remit to the claimant the union dues with respect to all members of the claimant with effect from end May, 2014.

4. THAT the respondent to negotiate the recognition and Collective agreements and to report the progress to the court within 60 days from the date of judgment on a date convenient to the parties.

5. THAT respondent to pay costs of the suit.

5. On 12 June 2014, the Respondent moved Court seeking stay of execution pending appeal.

6. There were several false starts on the hearing of the application and at some point the Court directed the parties to attempt out of Court settlement.

7. On 24 July 2014, the Union tabulated and filed in Court the accrued and unpaid union dues as Kshs 2,655,400/- as part of the out of court settlement. However, no agreement was reached.
8. When the stay application came up on 2 October 2014, the Respondent was not in Court, or represented and the Court dismissed the motion seeking stay pending appeal.
9. Come 16 July 2015, some employees of the Respondent moved Court under certificate of urgency through Nyambegera & Co Advocates seeking review of the Court's judgment. The employees were seeking mainly an order stopping deduction of union subscriptions from their wages.
10. The Court directed that the application be served for *inter partes* hearing on 29 October 2015.
11. When the application was called out on 29 October 2015, none of the parties were represented and the Court dismissed the application with costs to the Respondent.
12. On 10 December 2015, the Union also filed its own application for review, in which it sought to introduce computations of accrued and pending union dues.
13. When this application by the Union came up for hearing on 14 April 2016, the Court declined to hear it because there was no evidence that it had been served upon the Respondent.
14. The Court directed that the application be served and set mention for 4 July 2016 to give further directions.
15. Eventually both parties appeared in Court on 12 July 2016 and in response to an application by the Respondent for more time to reply to the Union's review application, the Court ordered the Respondent to file its papers before 15 July 2016, and fixed the application for 21 July 2016.
16. The Respondent did not comply with the orders of Court to file its papers and it was also not represented on 21 July 2016.
17. In the event, the Court allowed the Union to prosecute its review application and reserved ruling to today.
18. The Union did not before judgment compute the accrued and unpaid union subscriptions for the period December 2010 to April 2014.
19. The Court in its judgment also did not expressly make a finding on the amount of the accrued union subscriptions the Respondent was to pay from its own funds but ordered the Respondent to pay the same.
20. It is the computations which the Union sought to be incorporated into the judgment through the application for review.
21. This Court's jurisdiction on review is wider than that of the High Court under the Civil Procedure Act and Rules (provision has since been amended).
22. The nature of the cases coming up before this Court also makes it difficult in certain circumstances to detail sums/dues payable or awardable.
23. The Union computed what it thought were the accrued union dues for the period ordered by the Court as Kshs 2, 655,400/- and the Respondent was given an opportunity to respond or challenge the same but it failed to do so.
24. The Court would therefore allow the application for review and determine that the accrued and unpaid monthly union dues the Respondent ought to pay from its resources for the period December 2010 to April 2014 is Kshs 2,655,400/-.

25. The Respondent is ordered to pay to the Union the same within 30 days failure to which the Union is at liberty to commence execution proceedings.

Delivered, dated and signed in Nakuru on this 30th day of September 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Beru, Branch Secretary, Transport Workers Union (K)

For Respondent Mongeri & Co. Advocates

Court Assistant Nixon