



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2204 OF 2015**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 6<sup>th</sup> September, 2016)**

**KENYA AVIATION WORKERS UNION.....CLAIMANT**

**VERSUS**

**KENYA AIRPORTS AUTHORITY.....RESPONDENT**

**RULING**

1. The Application before Court is the one dated 10.12.2015. The Application was filed under Certificate of Urgency and brought through a Notice of Motion pursuant to Section 12(3) (viii), Section 20 of the Industrial Court Act No. 20 of 2011, Rule 13 (4), 16, 27, 24 (5) and 36 of the Industrial Court Rules 2010 Laws of Kenya, Section 14, 18(4), 27, 28, 48, 50, and all other enabling provisions and enactments of the law.

2. The Applicant sought the following orders:

- 1. That this Application be certified extremely urgent and the same be heard ex parte on a priority basis in the first instance.***
- 2. That the Respondent deducts and remits forthwith union dues from the Claimant/Applicant's members in Job Grade 5 who have signed the check off forms.***
- 3. That the Respondent desists from denying members of staff in Job Grade 5 the benefits and increments provided for within the Collective Bargaining Agreement registered on the 12<sup>th</sup> Day of February 2015.***
- 4. That costs of this Application be provided for.***

3. The Application was also supported by the annexed affidavit of Moss Ndiema, the Applicant's Secretary General and on the following grounds:

- 1. That pursuant to Clause 4.0 of the Collective Bargaining Agreement between the parties herein, employees in Job Grade S1-5 are eligible to join the union(s) of their choice and will not be denied to do so, subject too:-***

**a. Jobs that exercise Management and Administrative actions including but not limited to:-**

**(i) Giving and withdrawing rewards.**

**(ii) Promoting and demoting.**

**(iii) Transferring.**

**(iv) Taking disciplinary action.**

**b. Jobs that exercise confidentiality and have access to confidential information as defined in the Industrial Relations Charter;**

**2. That the Respondent herein has failed, refused, ignored and or neglected to remit the union dues of the members of the Claimant/Applicant from 2<sup>nd</sup> December 2014 despite receiving check off forms that were submitted by the Claimant/Applicant.**

**3. That the Claimant/Applicant has suffered and continues to suffer due to the Respondent's action of failing to remit the union dues from December 2014.**

**4. That the Respondent herein has refused, failed, ignored and neglected to effect the wage increments and benefits provided for within the Collective Bargaining Agreement to members of staff of Job Grade 5.**

**5. That it is only fair and just this Application be allowed.**

4. The Applicant depones that despite submitting check off forms to the Respondents to deduct union dues for its members since December 2014, the Respondents have failed to effect the deductions for staff in Job Grade 5. The Applicants aver that the eligibility of the said staff stem from the Collecting Bargaining Agreement (CBA) between the Applicants and Respondent under Clause 4.0.

5. The Respondents opposed this Application. They aver that the Clause in the CBA being referred to is not absolute but is conditional on certain grades and benefits.

6. Clause 4.0 of the CBA being referred to reads as follows:

**“Subject to this CBA and any other relevant laws and regulations, and unless expressly forbidden by the Industrial Relations Charter, employees in Job Grade S1-5 will be eligible to join union (s) of their choice and will not be denied to do so, subject to:-**

**a. Jobs that exercise Management and Administrative actions including but not limited to:-**

**(i) Giving and withdrawing rewards.**

**(ii) Promoting and demoting.**

**(iii) Transferring.**

**(iv) Taking disciplinary action.**

**b. Jobs that exercise confidentiality and have access to confidential information as defined in the Industrial Relations Charter”**

7. My reading of this provision is that all staff in Grade S1-5 are unionisable. It is only those in this grade who exercise the duties listed above who may not join the union and this is in case where the Industrial Relations Charter also forbids.

8. In the case of the Applicants herein, they have submitted the check off forms for staff who should be members of the union. Where the Respondents are of the view that the said staff belong to the category that is forbidden due to the nature of the work they do, the Respondent should expressly communicate this to the Applicants.

9. There is no indication that the Respondents have communicated to the Applicants their reservations about any of the intended members being members of the Applicants union. In the absence of this, the action of the Respondent in declining to effect deduction of union dues as per the submitted check off forms is a denial of the workers' rights to join a union of their choice as provided for under Article 41 (2) (c) of the Constitution which provides that:

***“Every worker has the right to form, join or participate in the activities and programs of a trade union and.....”***

10. I therefore find the action of the Respondent is in conflict with the law. I find the Application by the Applicant is merited and I find for them and order that:-

***(1) The Respondent deducts and remits forthwith union dues from the Claimant/Applicants members in Job Grade 5 who have signed the check off forms.***

***(2) The Respondent should not deny the said members of staff in Grade 5, the benefits and increments provided for within the CBA registered on 12.2.2015.***

***(3) Respondent to pay cost of this Application.***

Read in open Court this 6<sup>th</sup> day of September, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Gladwell Mumia for Claimant – Present

Kanyiri holding brief for Oyombe for Respondent – Present