



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 648 OF 2016

KENYA NATIONAL PRIVATE SECURITYWORKERS' UNION...CLAIMANT

VERSUS

PICHAZ SECURITY (K) LIMITED RESPONDENT

M/S Onyancha for claimant

M/S Wang'ombe for respondent

JUDGMENT

1. The suit is was canvassed by way of written submissions. The parties dispensed with the interlocutory application dated 19th April 2016 since it sought the same orders as contained in the main suit.
2. It was agreed that the court proceeds to determine the main suit therefore.
3. The claimant filed written submissions on 16th August 2016 whereas the respondent filed its submissions on 10th August 2016.
4. The issues in dispute are as follows;
 - i. Whether the respondent be enjoined from victimizing, harassing, dismissing or terminating employment of employees that have joined the claimant union.
 - ii. Whether the respondent is obliged to deduct and remit union dues to the claimant union.
 - iii. Who to bear the costs of the suit.

Facts of the claimant's case

5. That the claimant on or about February 2016 recruited twenty two (22) employees of the respondent as its members and submitted to the respondent check-off forms calling for the deduction and remission of trade union dues in respect of these employees in terms of section 48 of the Labour Relations Act, 2007.
6. A copy of the check-off form is annexed to the memorandum of claim marked 'GM1' and it contains names of the said employees with their national identification numbers, their cell phone numbers, signatures against each of the twenty two (22) employees and dates when they were recruited.

7. The claimant has also attached Gazette notice No. 10615 dated 3rd August 2012 issued by the Ministry of Labour in terms of section 48 (2) of the Labour Relations Act, No. 14 of 2007, ordering every employer who employs not less than five (5) members of the claimant union to deduct and remit union dues within ten (10) days of the date of deduction. The Gazette notice is marked 'GM2'.

8. The respondent filed a reply to the suit and the thrust of the response is that:-

i. The employee of the respondent deny joining the membership of the union as per letters marked 'CM2'.

ii. That thirteen (13) employees have subsequently left the employment of the respondent upon realizing that the claimant union recruited them and were not ready to pay union dues.

iii. That every employee has a right to join union of choice according to Article 36 of the Constitution and Section 5 of the Labour Relations Act, 2007.

9. Therefore the claimant union should not coerce its employees to join it and or purport to recruit them without their knowledge.

10. The respondent prays that the suit be dismissed with costs.

Determination

11. From the evidence before court, the claimant union has recruited more than five (5) employees of the respondent and the respondent is obliged to commence deducting union dues and remit the deducted dues to the union within ten (10) days of such deduction.

12. Furthermore, systematic termination of employment of the employees soon upon joining the union is a manifestation of unlawful conduct by the respondent as submitted by the claimant union that the respondent had embarked on victimizing, harassing coercing, intimidating, dismissing and terminating the employment of employees who had otherwise joined the claimant union freely and voluntarily by providing all their personal details and by appending their signatures to the check-off forms submitted before court.

13. The court has arrived at the inescapable conclusion that the version of events described by the claimant in its pleadings, written submissions and unchallenged documentary evidence, is plausible, reasonable and a representation of what actually happened on a balance or probability.

14. It is the court's finding that the conduct by the respondent is in violation of Article 36 and 41 of the Constitution of Kenya, 2010. That this conduct is further prohibited under the **Convention No. 87 Freedom of Association and Protection of the Right to organize, 1948**, which though not ratified by Kenya, forms the corpus of international law admissible under Article 2 of the Constitution of Kenya, 2010.

15. Article 1 of the Convention provides as follows:

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of employment.

2. Such protection shall apply more particularly in respect of acts calculated to:-

a) Make the employment of a worker subject to the condition that he shall not join or relinquish trade union membership.

b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours.

16. In terms of Article 41 of the Constitution, this conduct is categorized as unfair labour practice and this court frowns on the same since it is unlawful and unconstitutional.

17. Freedom of association by all workers and employers is protected under Article 36 of the Constitution and Sections 4, 5, 6 and 7 of the Labour Relations Act, 2007.

18. The claimant has on a preponderance of evidence proved that the respondent is engaged in systematic violation of its workers' rights and freedom aforesaid.

19. Accordingly, the court finds that the suit against the respondent has merit, and grants the following orders:-

a) That the respondent do deduct and remit union dues to the claimant from the date the check-off forms were signed by the unionsable members, in its employ in accordance with Section 48 of the Labour Relations Act.

b) That the union dues deducted be deposited in the claimant's Gazetted Account.

c) That the respondent is ordered not to intimidate, victimize, harass and or sack any worker on the basis of their involvement in union activity.

d) That the respondent is directed to allow all unionsable workers to be organized and engage in union's activities of their choice.

e) Costs to follow the outcome.

Dated and delivered at Nairobi this 28th day of October 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE