



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 340 OF 2014**

**KENYA CONCRETE, STRUCTURAL, CERAMICS TILES, WOOD PLY &  
INTERIOR DESIGNS WORKERS UNION (KCSCW) & I.....CLAIMANT**

***VERSUS***

**LAXMANBHAI CONSTRUCTION LIMITED.....RESPONDENT**

**KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE AND ALLIED**

**INDUSTRIES EMPLOYERS' UNION.....INTERESTED PARTY**

**RULING**

1. Application dated 12<sup>th</sup> April 2016 and filed on 12<sup>th</sup> May 2016 seeks the court to prohibit the respondent from continuing with the double deduction of union dues from the claimants members.
2. The applicant also seeks the court to enforce its order dated 4<sup>th</sup> April 2016 and order the respondent to sign a recognition agreement forthwith with the claimant who has over 900 members out of 1,100 employees of the respondent.
3. That the interested party in this suit Timber and Allied Industries Union lost its members to the applicant way back in 2012 and therefore any deduction made by the respondent and remitted to the interested party is unlawful.
4. That the court do issue an order requiring the respondent to refund the monies wrongly deducted from the claimant union.
5. The application is based on the grounds set out in the body of the application to wit;
6. That the respondent is illegally making double deductions on its employees, to two unions being the claimant union and the Building Construction Timber and Furniture Employees Union (BCTFEU).
7. That the deductions are illegal. That a check off list was served on the respondent as per the order of the court dated 4<sup>th</sup> April 2016 in a ruling by Nduma J., who declared that the respondent employees were members of the claimant union.
8. The application is supported by affidavit of Dishon Angoya the secretary general of the claimant union in which he affirms aforesaid facts.

9. The court referred the dispute for conciliation vide an order dated 30<sup>th</sup> October 2014. The claimant union states that the respondent and interested party failed to attend the conciliation and that the court needs to resolve this dispute once and for all.

10. The conciliator Mrs A. K. Nyaga filed a report in court dated 8<sup>th</sup> June 2015 in which he stated;

*“I called the parties for meetings three times but the management never attended any of these meetings.*

*The union and the shop stewards attended all the meetings and stated that all the employees are members of KCSCCT and IDWU. Due to the limitation of time, I hereby release the parties to the next level of arbitration.”*

11. The interested party in its submissions states that it was not invited to participate in the conciliation process and blames the claimant for the omission. This cannot be the case because interested party has already joined the suit when the court delivered a ruling remitting the dispute for conciliation by the Ministry of Labour.

12. The fact of the matter is that conciliation process failed and a certificate to that effect filed in court.

13. The main suit is therefore ripe for hearing and disposal.

14. Meanwhile, the respondent is bound to comply with the interim orders of the court dated 4<sup>th</sup> April 2016 by deducting union dues with respect to all employees in respect of whom it has been served with check-off forms by the claimant union and remit the deducted amount to the claimant union with effect from the date of the order.

15. The respondent is further prohibited from deducting twice union dues from the said employees for the benefit of any rival union including the interested party pending the hearing and determination of this suit.

16. The respondent is bound to obey the orders of the court before the court gives it further audience in this matter.

17. Furthermore, the respondent is directed to file with the court a report confirming such compliance within 30 days of this ruling.

18. Directions on the hearing and disposal of the main suit to be made on the date of the ruling.

19. The claimant/applicant is granted costs of this application as against the respondent.

**Dated and delivered at Nairobi this 14<sup>th</sup> day of October, 2016**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**