



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 274 OF 2016**

**KENYA NATIONAL UNION OF PRIVATE SCHOOL TEACHERS.....CLAIMANT**

**VERSUS**

**VICTONELL ACADEMY LTD.....RESPONDENT**

**RULING**

1. For determination is an application by the Kenya National Union of Private School Teachers (Union) dated 14 July 2016 seeking

1. ....

2. *THAT this Honourable Court be pleased to prohibit, injunct and or restrain the Respondent from harassing/intimidating, victimizing, threatening, unlawfully declaring redundant, wrongfully dismissing and or unfairly terminating services of employment of the Claimants members whose names appear in the check-off notices appended herein forthwith.*

3. *THAT the Respondent be directed to pay to the Claimant from its kitty the sums of monies due and owing to the Claimant as union dues which the Respondent has neglected/failed and or refused to deduct or remit from members whose names appear in the Check-off notices duly served upon it appended herein forthwith.*

4. *THAT the Respondent be directed to sign a formal Recognition Agreement with the Claimant forthwith.*

5. *THAT the Honourable Court be pleased to grant such other Orders or relief as it deems fit and just in the circumstances.*

2. When the motion was placed before Court on 22 July 2016, it was certified urgent and order 2 as proposed was also granted.

3. The Court directed the motion to be served upon the Respondent for *inter partes* hearing on 6 September 2016.

4. On 6 September 2016, the Respondent sought for time to file its response to the motion, and the Court granted it time up to 9 September 2016. A replying affidavit sworn by the Respondent's Manager was filed on 5 September 2016.

5. The hearing of the motion was rescheduled to 27 September 2016, when oral submissions were taken.

6. The Union's case on the motion is rather straight forward. It is that it recruited employees of the Respondent in March 2015 and forwarded to the Respondent the check-off forms with the names in December 2015, but the Respondent declined to commence deduction of union dues.

7. As a result a trade dispute was reported to the Cabinet Secretary responsible for Labour and a Conciliator was appointed, but the Conciliator had not invited the parties to make submissions.

8. The Union also contends that the Respondent has threatened the employees to renounce union membership.

9. The Respondent's Manager in his replying affidavit has deposed that the Respondent is not opposed to its employees joining the Union in exercise of their constitutional right, and that it would be unlawful for it to commence deduction of union dues when the employees have elected not to join the Union.

10. The Respondent also contends that the Union has not met the threshold to be granted recognition and therefore union dues cannot be deducted.

11. The Respondent denies victimising or harassing employees on account of joining or participating in union activities.

#### *Harassment of employees*

12. The Union has not brought forth any evidence through the affidavits how and when the Respondent victimised or harassed employees who had joined the union. No names or circumstances were disclosed.

13. In that respect, order 2 as proposed is not sustainable.

#### *Deduction of union dues*

14. As to the deduction of union dues, there is evidence on the papers that the Union recruited some of the Respondent's employees and Form S were forwarded to the Respondent.

15. The forms were clear as to what was expected of the Respondent and reference was made in the forms as to the ministerial order and amounts of deductions.

16. An employee signing a check-off form (Form S) is giving an employer firm instructions to act in a certain way as far as his or her remuneration is concerned.

17. In other words, an employee is free to dispose of his or her remuneration without hindrance from the employer and where such written instructions have been given, the employer should comply.

18. The Respondent therefore has no valid reason why it ought not to commence deduction of union dues and forward the same to the Union. It did not exhibit any withdrawal letters from the employees who had appended their signatures to the forms.

19. The Court would therefore find that the union has made a case for grant of order 3 of the motion but in an amended form to wit, that the Respondent start the deductions effective November 2016 failure to which it would meet the deductions from its own funds.

#### *Recognition*

20. On the issue of recognition, an order to that effect can only be made as a final order that is after hearing the Cause on the merits.

21. On that score the Court also notes that the Cabinet Secretary had accepted the dispute made to him by the Union on 11 May 2016 and observes that the conciliation process ought to be allowed to proceed to its

logical conclusion.

## **Conclusion and Orders**

22. The Court therefore makes the following orders

(i) Order 2 in the motion is declined at this stage.

(ii) the Respondent to commence deduction of union dues in respect of the employees who signed the check-off forms commencing November 2016 and remit the same to the Union.

(iii) On failure to comply with order (ii) above, the Respondent to meet such deductions in respect of the employees who signed the check-off forms from its own funds effective November 2016.

(iv) Recognition dispute to await completion of the pending conciliation process.

23. Each party to bear its own costs.

**Delivered, dated and signed in Nakuru on this 11<sup>th</sup> day of November 2016.**

**Radido Stephen**

**Judge**

### **Appearances**

For Union

Mr. Kairu instructed by Nancy Njoroge & Co. Advocates

For Respondent

Mr. Karanja instructed by Anthony Gikaria & Co. Advocates

Court Assistant

Nixon