



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KERICHO

CAUSE NO. 22 OF 2014

(Before D.K. N. Marete)

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL
INSTITUTIONS AND ALIED WORKERSCLAIMANT**

VERSUS

B.O.G CHILCHILA SECONDARY SCHOOLRESPONDENT

J U D G M E N T

This matter has originated vide a Memorandum of Claim dated 17th September, 2013, a filed at Nakuru as Cause No. 320 of 2013.

The issues in dispute are therein spelt out as;

1. ***“Refusal by the management to deduct and remit union dues and***
2. ***Refusal to sign Recognition Agreement”.***

The matter was heard *ex parte* and judgment entered in favour of the claimants on 7th November, 2014. However, the respondents filed an application seeking *inter alia*, setting aside of this judgment and enabling their representation at trial. This was allowed by a consent of the parties dated 5th February, 2015 and filed on the following day.

The matter came for hearing on 5th March, 2015 when the parties submitted that they indeed stood by and relied on their pleadings as presented and filed in court.

The claimants case is that there is a standing Recognition Agreement and Collective Bargaining Agreement entered into and signed *inter partes* on 18th March, 1986 by a gazette notice dated 26th August, 1993. The Board of Governors was directed to enter recognition with the appropriate union vide L.N.NO. 263 of 1993 annexed. The claimant thereby recruited the respondents workers and a check off form was issued to them. Due to lack of compliance by the respondent, a dispute was reported but this failed to yield positive results due to lack of co-operation from the respondents.

The claimants further case and submission is that no rival union is in the picture and that it has recruited twelve(12) out of twelve(12) employees or 100%. They are also compliant with the law but the respondent continues to flout this by violating Section 54 (2) and Section 19(a) (1) of the Employment Act, 2007 and Section 48 Labour Relations Act, 2007 by not deducting and remitting unions dues. This is also a fragrant breach of Article 41 of the Constitution of Kenya, 2010 which provides for the right to collective bargaining.

The claimants therefore pray for orders that the respondent be ordered to remit due union dues to the claimants gazetted account and also be ordered to pay arrears out of their pockets.

The claimant further prays that the respondent be ordered to sign the recognition agreement within sixty (60) days of the order of court and also that costs be awarded to them.

Mr. Mburu, counsel for the respondent sought to rely on the Respondents Reply to Memorandum of Claim and Statement of Defence dated 17th October, 2013 but also called DWI, Everlyn Koech to testify in defence.

DW1 testified that she is the Principal and Secretary, Board of Management of the respondent and has worked for the respondent for five(5) years and was therefore aware of the issues in dispute and also knew the claimants. She in evidence admitted that on 5th July, 2011, the claimant recruited nine (9) workers but of these, two are now deceased and one (1) has left the respondents employ. She further testified that she received a letter demanding deduction of union dues on 16th September, 2011 and then they later recruited another three (3) members. DW1 further testified that the respondent refused to sign the recognition agreement because they have excess workers, some of whom are paid by the Ministry of Education. Others of these workers are not qualified for their jobs and on enquiry, the respondent was advised to streamline her operations and staff structure. She further testified that there is no rival union and that she had thirteen (13) workers against 300 students and therefore cannot sign any agreements as the workers are in excess.

On cross-examination, she testified that the legal notice under reference was applicable at a time when parents were paying the workers and that the ground for lack of compliance was to facilitate a situation for the respondent to put her house in order. She testified that the union is entitled to union dues as much as some of these employees were not gainfully employed. "Some have nothing to do."

The issues for determination therefore are;

- 1. Is the Claimant entitled to collection and remission union dues and is the respondent obliged to deduct and remit the same.*
- 2. Is the Respondent bound to sign a Recognition Agreement and enter into negotiations for a Collective Bargaining Agreement with the claimant.*
- 3. Is there a case for payment of arrears of union dues by the respondent?*
- 4. Who bears the costs of this claim?*

The 1st issue for determination is whether the Claimant is entitled to collection and remission of union dues as prayed. It is not in dispute that the claimant has recruited 12 members of the workforce of the respondent. This is well past the more than five employees stipulated by Section 48(2) Labour Relations Act, 2007. She is therefore entitled to a deduction and remission of union dues and I find as such.

The 2nd issue for determination is whether the respondent is bound to enter into a recognition agreement and negotiations for Collective Bargaining Agreement with the claimant. It is again not in dispute that the claimant has recruited 12 members of the respondents work force. This is beyond the 50% plus 1 members stipulated by Section 54(2) of the Labour Relations Act, 2007. She is therefore entitled to the signing of a recognition agreement and also entry to negotiations for a Collective Bargaining Agreement.

The 3rd issue for determination is whether the claimant is entitled to arrears of union dues from the respondent. The claimants submission is that the respondent has been defiant of collection and remission of union dues and therefore should as a punitive measure be ordered to pay all arrears out of their pockets or purses. This would be disheartening. It is noted that the claimant has not strictly complied with the procedure for deduction of trade union dues as provided as Section 48 (2) of the Labour Relations Act, 2007 as follows;

(2) A trade union may, in the prescribed form request the Minister to issue an order directing an employer of more than five employees belonging to the union to

(a) deduct trade union dues from the wages of its members; and

(b) pay monies so deducted –

(i) into a specified account of the trade union; or

(ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.

This confuses the matter and despite issuing a form for deduction of trade union dues does not render the claimant altogether faultless. It could also be a middle ground and form a case for justice instead of outrightly castigating the respondent to an all out punishment. I therefore take this route, allow the claim, find and order as follows:

- 1. That the respondent be and is hereby ordered to deduct and remit union dues of the claimants members in the respondents establishment.*
- 2. That the respondent be and is hereby ordered to remit union dues owing to the claimant for the preceding twelve (12) months only.*
- 3. That the respondent be and is hereby ordered to sign a recognition agreement with the claimant within thirty (30) days of these orders of court.*
- 4. That the respondent be and is hereby ordered to enter into and complete a Collective Bargaining Agreement within ninety (90) days of these order of court.*
- 5. That the costs of this claim should be borne by the Respondent.*

Delivered, dated and signed this 19th day of March 2015.

D.K.Njagi Marete

JUDGE

Appearances

1. Hezron Onwong'a for the claimants
2. Mr. Mburu instructed by Rodi, Orege & Company Advocates for the respondent