



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NO. 1270 OF 2014**

(Before Hon. Justice Maureen Onyango on 13.3.2015)

**KENYA UNION OF ENTERTAINMENT & MUSIC INDUSTRY EMPLOYEES .....**  
**CLAIMANT/APPLICANT**

-VERSUS-

**BOMAS OF KENYA LTD .....**  
**RESPONDENTS**

**JUDGMENT**

The claimant union, the Kenya Union of Entertainment and Music Industry Employees filed this claim through its Secretary General Job W. Mucuha by Memorandum of Claim dated 31st July 2014 and filed in court on 4th August 2014. The claim is filed against the respondent Bomas of Kenya. The issues in dispute are the following:-

- a. **Refusal by the respondent to deduct and remit union dues for 40 employees.**
- b. **Refusal by the respondent to issue letters of appointment to 40 employees.**
- c. **Underpayment of salaries/wages for 40 employees as per the parties collective bargaining agreement (2012/2014).**

The claimant seeks the following orders:-

- a. **The respondent be ordered to deduct and remit dues for the 40 employees in this matter as from January 2013.**
- b. **The respondent be ordered to issue appointment letters to all the 40 employees in this matter.**
- c. **The respondent pays the 40 employees terms and conditions of service as per the collective**

**bargaining agreement of 2012/2014.**

- d. The respondent to pay all salary/wages/allowance arrears due to the 40 employees as from July 2012.**

Together with the Memorandum of Claim the claimant filed a Notice of Motion of the same date under certificate of urgency and further, a chamber summons seeking leave to be heard during the court vacation. In the Notice of Motion the claimant seeks the following Orders:-

- 1. That this honourable court certifies this application as urgent and the said application be heard *ex parte* in the first instance and service to the respondent be dispensed with.**
- 2. That this honourable court do issue orders directing the respondent to deduct dues for the 40 employees as per Gazette Notice No. 16483 pending hearing and determination of this application.**
- 3. That this honourable court do issue orders compelling the respondent to issue letters of appointment to the 40 employees in line with Employment Act 2007 Section 9 and 37 respectively.**
- 4. That the honourable court issue orders directing the respondent to pay all under payment arrears as per the parties collective bargaining agreement of 2012/2014 for the 40 employees.**
- 5. That the terms and conditions of service for the 40 employees conform to the collective bargaining agreement of 2012/2014.**
- 6. That the honourable court issues orders directing the respondent to supply the claimants with all records of payments of salaries/wages and allowances paid to the claimant's 40 members as per the Collective Bargaining Agreement for the period July 2012 to June 2014.**
- 7. That the respondent be ordered not to victimize, terminate or dismiss the services of any of the 40 employees until this matter is heard and determined.**
- 8. That failure by the respondent to appear before the court, the matter should proceed *ex parte* and the court to make a ruling.**
- 9. That the costs of this application be provided for in favour of the claimant/applicant.**

The application is supported by the affidavit of Job W. Mucuha and on the following grounds:-

- i. The 40 members acknowledged their membership to the claimants union in January 2014 and they signed check off system was delivered to the respondent and received by the respondent on 25th January 2014.**
- ii. The claimants/applicants have tried to pursue the deduction and remittance of union dues in vain. Up to date the respondent has not remitted any union dues in respect of the 40 members.**
- iii. The current collective bargaining agreement had an effective date of 1st July 2012 and was registered under CA No. 311 of 2013. All unionisable employees are still enjoying the agreement with exception of the 40 members in this matter. In fact they are underpaid as per the grading structure in Clause 1.1 of the parties' collective bargaining agreement.**
- iv. The claimants/applicants contend that the action taken by respondent not to remit union dues fees for 40 employees from January 2014 to date is meant to weaken the claimants financial position and has critically hurt the operations of the union to the detriment of its members.**

I heard the application *ex parte* and issued the following orders

- 1. That the application be and is hereby certified as urgent and admitted for hearing during vacation.**
- 2. That the respondent be and is hereby restrained from victimizing, terminating, dismissing or in any other way interfering with the employment of the 40 employees whose names appear in the check-off form annexed as Appendix 2 of the Memorandum of Claim pending the hearing *inter partes* of the claimants notice of motion dated 31st July 2014.**
- 3. That the application is fixed for *inter parte* hearing on 18th September 2014.**
- 4. That the applicant to serve application on the respondent.**

The respondent filed a replying affidavit of Jimmy Onkidiang'i, the respondent's Human Resource Manager sworn on 16th September 2014.

When the parties appeared before me on 18th September 2014 for *inter partes* hearing, Mr. Ouma who appeared for the respondent instructed by the Federation of Kenya Employers urged the court to hear the main claim as the prayers in the application could be tackled with those in the claim. He also gave an undertaking that the respondent will not terminate employment of any of the employee still in service pending the hearing of the case.

Mr. Mucuha for the claimant protested that the respondent had terminated employment of 26 of the grievants after being served with the court order in contempt of the orders. He stated that the grievants were dismissed the day after the court orders were served on the respondent. The case was adjourned to 22nd September 2014 to allow respondent's counsel confirm the veracity of the claimant's allegations.

On 22nd September 2014 the claimant was directed to file a further affidavit to prove the allegations made by Mr. Mucuha. The matter was again mentioned on 13th October 2015 when both Mr. Mucuha and Mr. Ouma confirmed filing further affidavits sworn by Mr. Mucuha and Mr. Onkidiang'i respectively on 8th October 2014. Mr. Mucuha reiterated that the respondent was in contempt of court orders of 5th August 2014 while Mr. Ouma stated that the alleged terminations were carried out before the court order was issued. I directed both parties to file written submissions based on the pleadings and the affidavits. The parties subsequently filed written submissions.

In the Memorandum of Claim the claimant states that it has members in the respondent's employment from whose salaries the respondent deducted union dues upon submission of check-off forms by the claimant. That on 25th January 2014 the claimant submitted check-off forms signed by 40 employees, but the respondent failed to make deduction of their union dues. The union alleges the respondent's failure to remit union dues is intended to weaken the union financially and will critically hurt the operations of the union to the detriment of it's members.

In the further affidavit sworn on 8th October 2014 (but erroneously typed as 2013) Mr. Mucuha depones that the respondent terminated 26 out of 40 grievants on 17th September 2014 a day before the *inter partes* hearing of the Notice of Motion on 18th September 2014. That the retained 14 grievants were not terminated as they were engaged as security guards which is an essential service. He further deponed that all the 40 grievants were paid monthly salaries and were therefore not casuals, that the respondent did not deduct union dues from the grievants even after acknowledging receipt of check-off forms and that the respondent should be reprimanded for disobeying court orders. Mr. Mucuha urged the court to order payment of union dues from date of receipt of check-off forms, while the issue of underpayments and issuance of appointment letters should be canvassed during the hearing of the claim.

The respondent filed a replying affidavit to the claimant's application on 17th September 2014 and a further affidavit on 9th October 2014. The respondent thereafter filed its written submissions dated and filed on 9th December 2014.

In the two affidavits sworn by Mr. Onkidiang'i and the written submissions, the respondent denied receiving the check-off form filed as Appendix 2 of the affidavit in support of the application. It stated that the check-off form served on the respondent was the one annexed as appendix JO2 of the replying affidavit which contains 53 names and not 40 as alleged by the claimant. He further deponed that there were casuals engaged intermittently whenever the respondent had events, and that they were paid at the end of each day worked. That at the time when the respondent was served with the order dated 8th August 2014 there were no events and the casuals named in the claimant's Appendix 2 were not in employment. The respondent submitted that the grievants named in the claimant's Appendix 2 are no longer in the respondent's employment and the respondent does have their records. That for this reason the respondent is unable to ascertain underpayments, if any, due to them.

In the further affidavit Mr. Onkidiang'i depones that he was served with the court order on 7th August 2014 while the grievants were paid and released on 31st July 2014. He attached a wages register for the month ending 31st July 2015 indicating payments to the casuals, some of whom are in the claimant's list of 40. He further stated that the respondent being a parastatal, its salary structure and level of remuneration is determined by the Government with the exception of casuals.

In the submissions filed on behalf of the respondent it is argued that the claimant did not provide any proof of non-compliance with the court order by the respondent, that some of the names in the claimants list, that is Rotich Aaron (No. 13), Patrick Kavila (No. 16), Salome Mutindi (No. 20), Hussen Haji (No. 13) and Charles Bitange (No. 36) were not in respondents employment on 25th January 2013 when the claimant's list is alleged to have been submitted to the respondent, that the respondent complied and made deductions of union dues which were remitted to claimant in respect of the 52 employees in the list, that the list of 40 employees annexed to claimant's Appendix 2 was never received by the respondent and that the prayers in the claim and those in the submissions are at variance.

I have considered the pleadings and the documents attached thereto. I have also considered the written submissions filed by the parties. From the pleadings and submissions, the following facts emerge:-

1. The parties have a valid recognition agreement and a collective bargaining agreement (CBA) the last one relevant to the dispute having been registered in court on 4th March 2014 and covering the period July 2012 to June 2014.
2. The respondent employs temporary employees who are paid on monthly basis, some of whom have been in employment for periods longer then one year.
3. That the respondent has not been giving the temporary employees terms agreed in the CBA as admitted in the further affidavit of Jimmy Onkidiang'i and evident from the wage sheets attached to both the replying affidavit and further affidavit.
4. It is evident that the respondent has been underpaying the grievants. It is also evident that the wages paid to the grievants did not include house allowances, annual leave and other allowances as provided in the collective bargaining agreement.
5. The claimant has not adduced any evidence to prove that the respondent failed to deduct and remit union dues for the 40 employees in the list attached to the Memorandum of Claim as Annexure 2. The claimant has also not indicated or tabulated the amount of underpayments due to any of the 40 employees in its Appendix 2.

From the foregoing, I make the following orders:-

1. That the claimant has not proved its claim against the respondent. The claim is therefore dismissed.
2. That the respondent issues records of the 40 employees in claimant's list at Appendix 2 of the

claim indicating date of employment and rate of pay to the claimant.

3. That the respondent regularizes payment for temporary employees to conform with the pay for their grades in the CBA.
4. Should any dispute arise relating to this decision the claimant should file a fresh dispute at the Ministry of Labour as provided in the Labour Relations Act.
5. Each party shall bear its costs.

Orders accordingly.

**Dated and delivered in Nairobi this 13th day of March, 2015**

**MAUREEN ONYANGO**

**JUDGE**

*In the presence of:*

..... for claimant(s)

..... for respondent(s)