

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1205 OF 2014

NATIONAL UNION OF WATER & SEWERAGE EMPLOYEES UNION.....CLAIMANT

VERSUS

NAKURU WATER & SEWERAGE COMPANY LIMITED.....1ST RESPONDENT

COUNTY GOVERNMENT WORKERS UNION.....2ND RESPONDENT

RULING

1. The Claimant filed an application on 18th July 2014 while the 2nd Respondent filed its application on 7th August 2014. The Claimant vide its application dated 18th July 2014 seeks an injunction to restrain the 1st Respondent from deducting union dues and remitting them to the 2nd Respondent and a mandatory injunction to compel the 1st Respondent to continue remitting dues to the Claimant. The 2nd Respondent filed an application dated 7th August 2014 seeking to discharge injunctive orders granted on 28th July 2014 in favour of the Claimant on deduction of union dues by the 1st Respondent. Both applications were supported by affidavits filed in support. The parties agreed to canvas the two applications together as the issue in dispute was the same. The Claimant filed written submissions on 11th February 2015. In the submissions the Claimant submitted that there were no orders issued on 28th July 2014 and that the orders granted to the Claimant were granted on 21st July 2014. The Claimant submitted that there was a recognition agreement and a collective bargaining agreement in place. The Claimant stated that there is a demarcation order in Cause No. 1142 of 2010 given on 23rd February 2012 and that the order was not set aside, varied or appealed against. The Claimant submitted further that the 2nd Respondents application was incompetent, frivolous, otherwise an abuse of the court as there were no proceedings on 28th July 2014 or order of the Court issued on that date. The Claimant alleged that the letters alleged to be resignation letters of the Claimant union members were never served upon the Claimant or 1st Respondent as required.

2. On its part the 2nd Respondent filed written submissions on 2nd March 2015. In the submissions the 2nd Respondent submitted that being dissatisfied by orders of the Court granted to the Claimant sought a stay or variation of the orders of the Court. The 2nd Respondent's application was heard on 11th August 2014 and the Court varied the orders by ordering that the dues be placed in an escrow account pending the hearing and determination of the application. The 2nd Respondent submitted that the Claimant has frustrated its efforts to get a recognition agreement with the 1st Respondent in place.

3. The issues for determination are simple. The Court must determine the following:-

1. Which union between the Claimant and the 2nd Respondent is mandated to represent the 1st Respondent's employees?
2. Which union between the Claimant and the 2nd Respondent is entitled to the union dues of the 1st Respondent?

4. The 2 unions are duly registered in terms of Section 14 of the Labour Relations Act. That issue is not in

dispute as they are both legal entities. The crunch is in the representation which was initially a dispute on demarcation settled by way of conciliation in Cause No. 1142 of 2010. The 2nd Respondent claims to have secured a simple majority of the 1st Respondent's employees. The Claimant disputes this and asserts the alleged resignations were not resignations.

5. The only way to determine which union has the numbers is to have a tally of the union members for each employee. In the present case, in order that the dispute be determined one way or the other the Court directs that the Labour officer under the Ministry of Labour, Social Security and Services at Nakuru undertakes a census of the employees of the 1st Respondent and the Union they belong to and avail the tally to Court within 45 days. The 1st Respondent to cooperate with the Labour officer Nakuru in the exercise. The Claimant and the 2nd Respondent unions to steer clear of the tallying exercise.

6. The Registrar of this Court to have the order served upon the Ministry of Labour Social Security and Services Nakuru within the next 4 days.

Orders accordingly.

Dated and delivered at Nairobi this 21st day of **April** 2015

Nzioki wa Makau

JUDGE