



**REPUBLIC OF KENYA**

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

**CAUSE NUMBER 1915 OF 2014**

**KENYA UNION OF ENTERTAINMENT AND  
MUSIC INDUSTRY EMPLOYEES.....CLAIMANT**

**VERSUS**

**SPORTS STADIA MANAGEMENT BOARD..... RESPONDENT**

**RULING**

1. The application dated 28<sup>th</sup> October, 201 seek orders that
  - (a) the respondent be restrained from victimizing and or terminating the services of any member of the applicant on grounds of Trade Union activities/affiliation.
  - (b) that the Court issues orders against the respondent to continue complying with the mandatory provisions of the law by way of implementing the existing Collective Bargaining Agreement until a new one is determined by the Court.
2. The applicant complained that the respondent had refused to fully negotiate a new Collective Bargaining Agreement and that it was inciting its workers to withdraw from the union.
3. Mr. Mucuha for the applicant submitted that the respondent continues to deduct union dues and agency fees but has refused to deduct from those it alleges to have withdrawn from the union membership. According to Mr. Mucuha section 49 (6) of the Labour Relations Act provides that a Collective Bargaining Agreement shall continue to bind the employer or employees who were parties to it at commencement and these include members who have resigned from the trade union or employers' association.
4. Mr. Ouma for the respondent submitted that the issue in the application had been resolved and the negotiating parties agreed that the applicants would iron them out with its rival union KUDHEIHA. He further submitted that until 30<sup>th</sup> September, 2013 there was a valid Collective Bargaining Agreement between the applicant and the respondent. It was on the basis of this Collective Bargaining Agreement that the Ministerial order in respect of agency fee was predicted.
5. Mr. Ouma further submitted that upon the lapse of the Collective Bargaining Agreement 2011-2013 it became difficult to negotiate another Collective Bargaining Agreement as the applicant was not able to muster the requisite majority to give it the mandate to negotiate. Counsel also submitted that as an employer, the respondent cannot allow itself to be caught in between the two unions and it was unreasonable to accuse the respondent of incitement simply

because its members have resigned and joined a rival union.

6. This is an interlocutory application hence the concern of the Court at this point is whether the applicant has demonstrated a prima facie case with probability of success and considering the nature of the claim, whether the balance of convenience lies in granting or refusing the injunction sought.

7. The dispute here is about negotiating and concluding a collective Bargaining Agreement between the parties. Whereas the applicant accuses the respondent of refusing to negotiate, the respondent states that it cannot negotiate with the applicants until the latter attains the necessary simple majority of members as provided in the Labour Relations Act. These are indeed serious factual and legal questions that merit determination by the Court. In that respect, the applicant has demonstrated a prima facie case with probability of success.

8. On question whether an interlocutory injunction should issue. The Court will order that the respondent does not terminate the services of any employee on the basis of either membership or affiliation to the applicant union.

9. The Court however will not order that the respondent continues to comply with the mandatory provisions of the law by way of continuing to implement in totality the existing Collective Bargaining Agreement until a new one is determined by the Court for the reason that this forms the backbone of the dispute between the parties. The applicant has accused the respondent of refusing to negotiate while the respondent has maintained that the applicant has since the last Collective Bargaining Agreement lost the simple majority necessary for negotiations. If the matter is resolved in favour of the applicant at the main trial, the Court can order the remittances to be made by the respondent in arrears as well as give directions on how recovery can be made from the employees concerned.

10. These will be the orders of the Court.

Dated at Nairobi this 7<sup>th</sup> day of May 2015

Abuodha J. N.

Judge

Delivered this 7<sup>th</sup> day of May 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge