



**REPUBLIC OF KENYA**

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

**CAUSE NO. 5 OF 2014**

**KENYA UNION OF COMMERCIAL, FOOD AND**

**ALLIED WORKERS.....CLAIMANT**

**VERSUS**

**JATOMY ENTERPRISES LIMITED...RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 31<sup>st</sup> July, 2015)

**JUDGMENT**

The claimant filed on 10.12.2014 the notice of motion brought under section 12 of the Industrial Court Act, 2011, sections 48, 54 and 74 of the Labour Relations Act, 2007, section 87 of the Employment Act, 2007 and the Industrial Court (Procedure) Rules 2010. The substantive prayers in the notice of motion were as follows:

- a. That the honourable court orders the respondent to deduct and remit union dues from their employees who have already acknowledged their membership with the claimant or applicant.
- b. That the court be pleased to issue orders restraining the respondent from victimizing, intimidating, coercing, harassing, terminating, dismissing, forcing withdrawals from the union, transferring or disciplining the claimant's members on account of their trade union membership.
- c. That the honourable court orders the respondent to sign recognition agreement in accordance with section 54 of the Labour Relations Act, 2007.
- d. That costs of the application be provided for.

The application was supported with the affidavit of James Muriuki Njue attached on the application. The respondent filed on 16.05.2015 the replying affidavit of Jackson Kibunyi Wainaina to oppose the application.

In Cause No. 59 of 2013 at Nyeri between the same parties, this court delivered a ruling on 23.05.2014 and ordered that the respondent commences deductions of union dues forthwith from those unionisable employees who had verified to have voluntarily signed the check off sheets and further that the respondent in accordance with the provisions of section 56(1) and 56(2) permits the applicant to access its premises for purposes of recruiting union members. The court further directed that a recognition agreement be entered into within 60 days of attainment of simple majority as stipulated under section 54(1) of the Labour Relations Act, 2007. The court finds that the issues of recognition, deduction of union dues and recruitment of members by the claimant were conclusively decided in the said cause 59 of 2013 and it was an abuse of the court process to raise the same issues in the present suit as the same was *res judicata*. Thus the court directs parties to comply with the orders as made in cause 59 of 2013 and any disobedience may be handled in accordance with the relevant law. The respondent did not oppose prayer (b) by the claimant as earlier set out in this judgment and the court finds that the claimant is entitled to that prayer in line with fair labour practices and workers right to participate in union activities as provided for in Article 41 of the Constitution and all the enabling legislation.

In conclusion the application is determined with orders as follows:

1. Parties to comply with the orders as given on 23.05.2014 in cause 59 of 2013 at Nyeri between the

- parties and any disobedience may be handled in accordance with the relevant law.
2. The respondent is hereby restrained by itself or its employees or agents from victimizing, intimidating, coercing, harassing, terminating, dismissing, forcing withdrawals from the union, transferring or disciplining the claimant's members in employment of the respondent on account of their trade union membership.
  3. Each party to bear own costs of the present suit.

**Signed, dated and delivered in court at Nyeri this Friday, 31<sup>st</sup> July, 2015.**

**BYRAM ONGAYA**

**JUDGE**