



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**CAUSE NO 781 OF 2014**  
**KENYA UNION OF ENTERTAINMENT**  
**& MUSIC INDUSTRY EMPLOYEES ..... CLAIMANT**  
*VERSUS*  
**SPORTS STADIA MANAGEMENT BOARD ..... RESPONDENT**

Mr. Muchuha for Claimant / Applicant

Mr. Ouma for Respondent

**RULING**

1. The Application serving before Court was filed on 15<sup>th</sup> May 2014 under a certificate of urgency seeking orders:
- (2) That an order be and is hereby issued directing the Respondent to implement Gazette Notice No. 9240 on deduction of agency fees under the Labour Relations Act No. 14 of 2007 dated 26<sup>th</sup> July 2011 pending the hearing and determination of this application.
- (3) That an order be and is hereby issued restraining the Respondent and its agents from stopping any deduction of agency fees amounting to Kshs.34,219.72 per month as had lastly been deducted as per Appendix 4 for the month of February 2014.
2. The order was granted in these terms on 19<sup>th</sup> May 2014 and the same was served on the Respondents.
3. The Application was accompanied by a Memorandum of Claim in which the relief sought is:
  - a. The Respondent is ordered to implement deduction of agency fees per the Minister's order and any arrears that were due to the Claimants be remitted.
  - b. The Respondent to remit both agency fees and Union dues before the 10<sup>th</sup> day of the preceding month after deductions have been made from the employees earnings.
4. It appears at the outset, the determination of the Application as filed would also conclude the issues in dispute and the remedy sought in the main suit.
5. The Respondent filed grounds of opposition to the Notice of Motion Application dated 15<sup>th</sup> may, 2014 in that the Application offends the provision of **Section 59** of the Labour Relations Act, 2007 since The Ministerial order in reference relates to a Collective Bargaining Agreement that expired on 9<sup>th</sup> September 2011.

6. That the Applicant did not pursue external dispute resolution mechanism provided under **Clause 3(d)** of the Recognition Agreement between the parties. The Application is thus premature and same be dismissed.
7. In addition the Respondent filed a Memorandum of Response dated 4<sup>th</sup> May 2015 on the 6<sup>th</sup> May 2015.
8. The Respondent reiterates that there is no new Ministerial order in respect of the prevailing Collective Bargaining Agreement running between 2011 and 2013 and registered on the 20<sup>th</sup> January 2014. Under entry No. RCA NO. 2, 2014.
9. That the Claimant is not entitled to any union dues or agency fees because employees of the Respondent applied to join Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) .
10. The Respondent states it has no authority to deduct agency fees from employees who were not members of the Claimant Union without an express order from the Minister duly gazetted.
11. **Determination**

**Section 49** of the Labour Relations Act, 2007 reads;

*“(1) A trade union that has concluded a Collective agreement registered by the Industrial Court with an employer, ..... Setting terms and conditions of service for all unionsable employees covered by the agreement may request the Minister to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionsable employee covered by the collective greement who is not a member of the trade union.”*

**Section 59(2)** of the LRA, 2007 provides;

*“A collective agreement shall continue to be binding on an employer or employee who were parties to the agreement at the time of its commencement and includes members who have resigned from that trade union or employer association,”*

whereas **Section 59(3)** reads;

*“the terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.”*

12. From the foregoing, the Court finds that;

The terms of a collective agreement that has expired continue to bind the parties upon expiry of the collective agreement until a new collective agreement is negotiated, concluded and registered with the Court in terms of **Section 60(1)** of LRA, 2007.

13. That there is no statutory requirement for the union which had concluded a collective agreement that has expired and a new agreement has been concluded and registered to make a fresh request to the Minister to issue a fresh order requiring the employer to deduct agency fees from the wages of each unionsable employee covered by the collective agreement who is not a member of the trade union.
14. Agency fees relates to unionsable employees who are not members of the recognized union and therefore resignation of members of a union who remain as employees of the employer who has concluded a collective agreement with the union requesting deduction of agency fees is immaterial.
15. There is no evidence before Court that (KUDHEIHA) has been recognized by the Respondent and has concluded a collective agreement with the Respondent to the exclusion of the Claimant Union.
16. Accordingly, the Court directs the Respondent;

To implement Gazette Notice No. 9240 on deduction of agency fees under the Labour Relations Act, No. 14 of 2007 dated 26<sup>th</sup> July 2011 in respect of the collective agreement for the period 2011

to 2013 and registered on 20<sup>th</sup> January 2014.

17. That the said deduction of agency fees to continue upon expiry of the collective agreement for the period 2011 to 2013 and registered on 20<sup>th</sup> January 2014, until a new collective agreement has been negotiated, concluded and filed with the Court.
18. The Respondent to pay all the arrear agency fees deducted from all the unionsable employees of the Respondent and not to reduce and or vary the amounts deducted.
19. In the event, the Respondent fails to comply with this order of the Court contempt proceedings to issue.
20. The Court notes that the Claimant seeks the same orders as in the Application which has now been determined.
21. If there are outstanding issues to be determined the matter will take its normal cause.

**Dated and Delivered at Nairobi this 3<sup>rd</sup> day of July, 2015.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**