



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 211 OF 2015

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS & HOSPITAL WORKERS

CLAIMANT

v

ELDORET POLYTECHNIC

RESPONDENT

RULING

1. In a motion filed simultaneously with a Memorandum of Claim on 15 July 2015, the Kenya Union of Domestic, Hotels, Educational Institutions & Hospital Workers (KUDHEIHA) against Eldoret Polytechnic (Respondent), KUDHEIHA sought orders
 1. (spent)
 2. THAT the Honourable Court be pleased to issue ORDERS restraining the Respondent from harassing, intimidating, victimizing, declaring redundant or otherwise terminating the services of her employees who have joined the Claimant *upon(sic)* until this matter is heard and determined.
 3. THAT the Honourable Court be pleased to issue ORDERS for the Respondent to deduct and remit union dues for the members as per the check off list already served on them.
 4. THAT the Honourable Court be pleased to issue further ORDERS for the Respondent to enter recognition agreement with the Claimant within 30 days, commence and conclude CBA negotiations within 90 days from date hereof.
2. The motion was certified urgent on 16 July 2015 and the Respondent filed on 28 July 2015, a replying affidavit sworn by its Chief Principal, Josphat Sawe.
3. The Claimant filed a further affidavit sworn by its Acting Secretary General on 29 July 2015 and this prompted the Respondent's Chief Principal to file a further affidavit on 22 October 2015. This further affidavit was filed without leave.
4. The motion was argued on 22 October 2015.
5. Prayer 4 of the motion can only be subject to determination of the main Cause on the merits and the Court will not discuss it at this stage. Therefore this ruling will examine whether prayers 2 and 3 of the motion are merited.
6. KUDHEIHA submitted to the Respondent lists of its employees who had joined it on 8 February 2012 and 23 February 2015 with a view to grant of recognition.
7. KUDHEIHA thereafter followed the lists with several letters seeking a meeting to enter into a recognition agreement. The Respondent responded on 29 October 2014 suggesting that a meeting

- be held in February 2015.
8. KUDHEIHA then proposed a meeting for 17 February 2015 but nothing came out of it. Consequently, KUDHEIHA reported a trade dispute to the Cabinet Secretary, Labour, Social Security & Services.
 9. The Cabinet Secretary accepted the trade dispute and a conciliator was appointed on 24 April 2015. In submissions to the conciliator, the Respondent denied the existence of a trade dispute, and it failed to attend a conciliation meeting called by the conciliator.
 10. On 2 June 2015, the conciliator certified a disagreement and recommended that the dispute be referred to this Court.
 11. According to KUDHEIHA, the Respondent had pressurized its members to revoke their membership and started suspending some of the employees.
 12. A suspension letter dated 24 July 2015 addressed to one Dominic Melly and annexed to the further affidavit was used by KUDHEIHA to illustrate its case that there was harassment. The suspension letter in its body has made explicit reference to the participation of the employee in union activities amongst other allegations.
 13. The Respondent's Chief Principal in his 2 affidavits deposed that out of the list of employees sent to it, there were only 63 employees who had joined/belonged to KUDHEIHA as 56 had denied membership or written resignation letters.
 14. The Chief Principal also deposed that none of the employees had instructed him to commence deduction of union dues and forward the same to KUDHEIHA and that the check offs were not sufficient instructions.
 15. He further deposed that Dominic Melly was suspended for reasons unrelated to his union activities.
 16. The suspension letter of Dominic Melly gives one of the reasons for suspension as

(2) You did present a fictitious list of persons purporting that they have registered with KUDHEIHA. You forged their signatures without their knowledge or consent.

(7) You have been holding/hosting illegal meetings behind the Buildings of Eldoret National Polytechnic.

17. The contents of the suspension letter leave no doubt in my mind that there is some need to investigate further KUDHEIHA's contention that some employees who had joined it were being victimised.
18. Pending that investigation, it would only be fair to restrain the Respondent from harassing or intimidating such employees.
19. On the prayer regarding union deductions, the assertions by the Chief Principal that no employee had instructed him to deduct union subscriptions has no merit.
20. The practice and tradition and legal requirement (section 48(3) of the Labour Relations Act) is that a union notifies an employer of those employees it has recruited by forwarding to the employer a list of the names in the format of Form S to the Labour Relations Act.
21. The list of names submitted to the Respondent were in the appropriate format and the Respondent had no other choice but to comply and commence deduction of union dues within 30 days of the receipt of the names.
22. In my view, Form S duly filed and signed by an employee is sufficient instructions by the employee to the employer to comply if there is a demonstration that the Cabinet Secretary had made the necessary gazette.
23. The forms sent to the Respondent made reference to Legal Notice No. 3585 of 31 May 1994.
24. The Respondent had no option but to comply within 30 days.
25. Of course a prudent employer would want to verify that the employees listed in the check off forms had signed the forms.
26. In so far as the Respondent admits that 63 employees had genuinely appended their signatures to the forms, the deduction of union subscriptions should be effected.
27. One word before concluding. The Respondent's conduct in ignoring meetings called by the Conciliator is regrettable. A Conciliator appointed by the Cabinet Secretary has a statutorily ordained role in attempting to amicably resolve trade disputes with a view to fostering good industrial relations in the work place and all parties must give them due respect.

28. Considering the foregoing, the Court would grant the following orders

- a. THAT an order do issue and is hereby issued restraining the Respondent from harassing, intimidating, victimizing, declaring redundant or otherwise terminating the services of her employees on account of union activities pending the hearing and determination of the Cause herein.
- b. THAT an order do issue and is hereby issued directing the Respondent to deduct and remit union dues commencing 31 December 2015 for the 63 members who have acknowledged union membership to KUDHEIHA's account designated/approved by the Cabinet Secretary.
- c. Respondent to pay KUDHEIHA costs of the motion for ignoring the conciliator.
- d. THAT the Cause be set down for hearing on an accelerated basis.

Delivered, dated and signed in Nakuru this 17th day of December 2015.

Radido Stephen

Judge

Appearances

For Claimant

Mr. Syembo (Branch Secretary), KUDHEIHA

For Respondent
Advocates

Mr. Ombati instructed by Andambi & Co.

Court Assistant

Nixon