



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1970 OF 2015

KENYA NATIONAL PRIVATE SECURITY

WORKERS UNION.....CLAIMANT

VS

EVEREADY SECURITY GUARDS LIMITED.....RESPONDENT

RULING

1. This ruling flows from the Claimant's application brought by way of Notice of Motion dated 5th November 2015 under certificate of urgency. The application, which is supported by the affidavit of Isaac G.M. Andabwa seeks orders that pending the hearing and determination of this case:
 - a. The Respondent be prohibited from victimising, harassing, intimidating, dismissing or terminating and transferring any of the union members appearing on the check off forms;
 - b. The Respondent be ordered to release the original identity cards and academic/professional certificates belonging to the Respondent's employees;
 - c. The Respondent be compelled to deduct union dues from all its unionisable employees who have signed check off forms and remit the said union dues to the Claimant's gazetted account;
 - d. The Respondent be directed to stop illegal deduction of union dues amounting to Kshs.170.00;
 - e. The Respondent be directed to effect statutory deductions and issue payslips to its workers;
 - f. The Respondent be directed to allow its workers to organise and engage in union activities;
 - g. The Respondent to bear the costs of this application.
2. The application is based on the following grounds:
 - a. The Claimant is empowered by the Labour Relations Act to recruit employees of the Respondent into union membership;
 - b. The Claimant has recruited at least five employees and the recruitment process is still on;
 - c. The Respondent has refused to deduct union dues from the Claimant's members in spite of being served with duly completed check off forms;

- d. The Respondent has been deducting Kshs. 170 from its employees as union dues which is paid into an account that is unknown and not gazetted;
- e. The Respondent is likely to victimise its employees who are members of the Union;
- f. The Respondent has retained original identity cards and academic/professional certificates belonging to its employees;
- g. The Respondent has violated Article 41 of the Constitution.

3. In the supporting affidavit sworn by Isaac G.M Andabwa on 7th November 2015, he depones that on 8th October 2015, he wrote to the Federation of Kenya Employers seeking their intervention to secure the release of employees' original documents retained by the Respondent.

4. Andabwa further depones that on 13th March 2001, the Minister found and recommended that the Claimant be accorded the sole mandate of representing workers in the security sector and that the Kenya Union of Commercial Food and Allied Workers should vacate the sector. The Minister's recommendation has since been upheld by this Court.

5. I have examined the Claimant's application and find that the orders sought are similar to the prayers sought in the Memorandum of Claim filed alongside the application on 5th November 2015. The result is that if the orders sought in the application are granted, the main claim will have been determined at the interlocutory stage.

6. The Court has therefore come to the conclusion that the application as filed is an abuse of the court process and proceeds to dismiss it with no orders for costs. The Claimant is at liberty to seek a hearing date for the main claim on priority basis.

7. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 4TH DAY OF DECEMBER 2015

LINNET NDOLO

JUDGE

Appearance:

Miss Onyanja for the Claimant

No appearance for the Respondent