



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 338 OF 2013

**KENYA BUILDING, CONSTRUCTION, TIMBER &
FURNITURE INDUSTRIES EMPLOYEES UNION.....CLAIMANT**

- VERSUS -

RAI PLYWOOD (KENYA) LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 20th June, 2014)

JUDGMENT

The claimant union filed the memorandum of claim on 11.10.2013. The claimant prayed for judgment against the respondent for:

- a. **An order of declaration by the honourable court that the respondent's actions of unilaterally awarding itself 5% of the loan repayment instalment is unlawful and an order to issue restraining the respondent from effecting further deductions.**
- b. **Respondent be ordered to refund to each and every grievant all the monies so illegally deducted from the date of commencement till the full determination of this suit.**
- c. **Costs of this suit.**
- d. **Any other relief the honourable court may deem fit to grant.**

The memorandum of response was filed on 28.11.2013 through Kalya & Company Advocates.

The facts of this case are straight forward. The respondent's employees took bank loans from National Bank of Kenya. The repayments were to be effected by monthly deductions from each employee through a check-off system. In that process, the respondent apportioned itself a 5% of the loan being the repayment instalment facilitation fee as defined for the respondent. The claimant filed suit for a declaration that the 5% loan repayment facilitation fees were an illegal deduction and all the monies illegally deducted be refunded.

The respondent's case was that the deductions were authorised by the workers in their loan application forms which were approved by the bank and consented to by the affected workers.

The claimant's evidence was by George Mosati Nyangweso (CW1) and Simon Gitau (CW2). They both took the loans in issue. In both cases, the loan they had applied for in the loan acceptance form had been

increased by 5% without their knowledge and the respondent had imposed the 5% as the charge for the respondent's check-off system services.

The relevant provision stated as follows:

“I hereby authorise Rai Plywoods (employer) to deduct a sum of Kshs....(the amount stated including 5% administration fees) every month from my pay with effect from ... and pay National Bank of Kenya Limited... These instructions will remain in force until National Bank of Kenya Limited discharges me in writing from liability.”

The claimant's witnesses stated that the amount was inserted without their knowledge long after they had agreed with the bank on the amount of money to be loaned and the repayment instalments.

One thing that is clear is that under the clause, the amount to be deducted was payable to the bank and not the respondent. The court finds that the respondent cannot therefore rely on that provision to justify the workers' consent for the respondent to recover the 5% repayment facilitation fees as alleged for the respondent. It was, in the court's opinion, an unfair labour practice for the respondent to impose the 5% charge and to deduct it without the consent of the workers and the deduction has not been established to have been lawful under section 19 of the employment Act. Accordingly, the court finds that the claimant is entitled to the remedies as prayed for.

In conclusion, judgment is entered for the claimant against the respondent for:

- a. **The declaration that the respondent's action of unilaterally awarding itself 5% of the loan repayment instalments was unlawful.**
- b. **The respondent by itself, its agents or employees is restrained from effecting further deductions of the 5% of the loan repayment instalments.**
- c. **The Respondent to refund to each and every affected employee all the monies so illegally deducted from the date of commencement till the date of determination of the judgment and to refund all the deductions by 1.08.2014 and failing, interest to be payable at court rates from the date of the judgment till full payment.**
- d. **The respondent to pay the claimant's costs of the suit.**

Signed, dated and delivered in court at Nakuru this Friday 20th June, 2014.

BYRAM ONGAYA

JUDGE