



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 269 OF 2013

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

- VERSUS -

MOI TEACHING AND REFERRAL HOSPITAL.....RESPONDENT

-AND-

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND ALLIED
WORKERS.....INTERESTED PARTY**

(Before Hon. Justice Byram Ongaya on Friday 6th June, 2014)

JUDGMENT

The claimant filed the statement of claim on 19.08.2013 and prayed for judgment against the respondent for orders:

- a. That the respondent be directed to pay to the claimant from its kitty the sums due and owing to the claimant as union dues which the respondent has neglected, failed and refused to deduct or remit from members whose names appear in the check-off notices appended on the statement of claim with an interest of 18%.
- b. That the honourable court do issue orders committing each board member of Moi Teaching and Referral Hospital Board to a fine of Kshs.10,000.00 and Kshs.40,000.00 to the institution respectively for contravening the mandatory provisions of section 54 of the Labour Relations Act, 2007.
- c. That the honourable court do issue orders adapting and registering the proposed collective bargain agreement as sent to the respondent in total effective 1st July 2013, forthwith.
- d. That the honourable court be pleased to grant such orders or relief as it deems fit and just in the circumstances.
- e. That costs be provided for by the respondent.

The respondent's reply to the statement of claim was filed on 03.10.2013 through Kalya & Company Advocates. The respondent prayed that the claimant's suit against the respondent be dismissed with costs.

The interested party applied to be enjoined on 09.12.2013 and orders were made accordingly to enjoin the interested party. The interested party filed a memorandum of interest and opposition to the statement of claim on 25.03.2014.

The claimant is a registered trade union and has on 10.08.2012 concluded a recognition agreement with the respondent. The claimant's case is that subsequent to the signing of the recognition agreement, the respondent has failed and refused to negotiate the collective agreement despite the unsuccessful conciliation proceedings. The claimant's case is therefore for orders that the respondent concludes the collective agreement and remits union dues.

The respondent has not objected to remission of union dues save for administrative matters such as the claimant's provision of relevant bank accounts into which the deducted dues would be banked. The respondent has pleaded that it has remitted part of the union dues. As for conclusion of the collective agreement, the respondent has pleaded that time had lapsed due to necessary consultations with the relevant government agencies.

In particular, there was need to comply with the salary and remuneration guidelines as issued by the Salaries and Remuneration Commission. The respondent has therefore pleaded that it has not refused or neglected to negotiate and conclude the collective agreement.

The respondent has pleaded that it has never refused to give the claimant the list of names of nurses in its employment and who are not members of the union but has been reluctant to do so because such nurses are members of other unions.

The respondent's case is that as an employer, it should not be viewed as facilitating movement of nurses from one union to another. Further, the respondent's head nurse is a member of the claimant and would be able to provide the relevant information on the nurses as necessary. The respondent has further pleaded that the notice to sue was never served.

The interested party's case is that after the claimant and the respondent concluded the recognition agreement, the respondent concluded collective agreements with the interested party covering all employees of the respondent. The interested party therefore opposed the claimant's statement of claim.

The only issue for determination in this case is whether the claimant is entitled to the prayers as made in the statement of claim. The court makes the findings as follows.

First, the court finds that the respondent has not opposed the remission of the union dues and conclusion of the collective agreement but the respondent has submitted that it needs sufficient time to undertake consultations before concluding the agreement. Secondly, as the court has found that there is no significant dispute between the claimant and the respondent, the court further finds that the claimant is generally entitled as claimed.

Thirdly, there exists a collective agreement between the respondent and the interested party covering among others, all nurses who are members of the claimant. It is the opinion of the court that the agreement constitutes vested rights and obligations between the respondent, interested party and the affected employees.

The court holds that the nurses' joining of the claimant union did not thereby vary the binding effect of the subsisting collective agreement between the respondent and the interested party which in clause 34 was effective 1.07.2012 and to remain in force for two years or until amended by the parties.

While making that holding, the court further considers that in the present suit, the interested party did not make any substantive claim other than urging that the claimant's suit should not succeed.

Finally, the court finds that the claimant did not specifically plead the figures of the union dues owed as at the time of filing the suit. The claimant further failed to disclose in the statement of claim the undisputed

fact that the respondent had paid part of the union dues.

Taking all the circumstances of the case into account including that the claimant's members in the respondent's employment were at material time, until their resignation, members of the interested party, the court enters judgment and makes orders as follows:

1. The respondent shall effective end of June 2014 continue to deduct and remit union dues with respect to all its employees who are members of the claimant and pay the same into the bank account whose details shall be served upon the respondent by the claimant within three days from the date of this judgment.
2. The respondent shall negotiate and conclude a collective agreement with the claimant by 1.09.2014 and in accordance with the relevant provisions of law.
3. The parties shall bear their own respective costs of the suit.

Signed, dated and delivered in court at **Nakuru** this **Friday 6th June, 2014**.

BYRAM ONGAYA

JUDGE