



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 318 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 17th September, 2014)

KUDHEIHA WORKERS CLAIMANTS

-VERSUS-

BOG WIKOTENG MIXED SEC. SCHOOL RESPONDENTS

JUDGMENT

The claimants herein KUDHEIHA Workers filed this claim on 14.11.2013 on behalf of the grievant, their member Albert Odhiambo Wao. The main issues of contention are the refusal by the respondents to deduct union dues, underpayment of wages and unfair termination of the said Albert Odhiambo Wao.

The grievant gave his oral evidence in court and stated that he was employed by the respondents in February 2007 as a cook and a guard at a basic salary of 2,000/= per month. He was not paid any other allowances. He joined the claimants trade union in 2007. He worked for respondents until he was verbally terminated for no apparent reason on 13th September 2011.

On issue of union dues, the claimants contention is that they are a trade union with a recognition agreement with the respondents. However, the respondents failed to deduct and remit union dues as expected. The claimants reported a trade dispute to the Minister of Labour vide their letter dated 29th August 2011. A conciliator was appointed to resolve the dispute. An attempt was made to resolve the matter but it was unsuccessful. The same was referred to court for further action as per **App 11**.

The claimants now seeks to be paid the union dues which remain unpaid totalling Ksh 49,350/= plus interest. They also pray that an order be made to have the basic salary of the workers raised to be in conformity with the wages orders. Another prayer is for the reinstatement of Albert Wao and payment to him of all withheld salaries to-date.

The respondents filed their reply to the memo of claim on 28.11.2013 through the firm of G. S. Okoth & Co. Advocates. Their contention is that the grievant was not in their employment. They contend that their school is a day school and it is the parents who made arrangement to have their children have meals in school and so employed the grievant to do the cooking. They aver that the workers who are employed by the board are paid by the board and are members of the union and the school remits the union dues as expected. They contend that the Ministry does not make provision for salaries or wages for cooks and therefore the board has no such vote for cooks. They stated that infact Albert was a casual worker engaged by the PTA and was not answerable to the Board of Governors.

Having heard both parties, the issues for determination are as follows:-

1. **Whether the respondents failed to remit union dues to the claimants.**
2. **Whether Albert Odhiambo was an employee of the respondents and if so;**
3. **Whether he was paid salary as per requirement of law and**
4. **If he was unlawfully terminated by the respondents.**

On 1st issue, **App 5** produced by the claimants is a check off form addressed to the respondents dated 30.11.2010 asking the respondents to remit union dues for the listed workers. The form was signed by 7 workers. The respondents admitted that they have a recognition agreement with the claimants and used to remit union dues. The only indication that the dues were remitted is respondent's **App 1** where union dues for Millicent Odero and Samson O. Ochieng totalling Ksh 2,520/= were remitted to both COTU and KUDHEIHA for the period of July 2012 to December 2013. No other dues for the other workers were remitted. The respondents were invited by the conciliator to attend a conciliation meeting and submit all their documentation and they failed to do so. Their allegation that they submitted all union dues as expected must be proved/established by the respondents. They have failed to do so. It therefore remains that the respondents didn't remit the union dues totalling Kshs 49,350/= as at October 2013 less the amount remitted of Kshs 2,520/= balance Ksh 46,830/=.

On the second issue, the question is whether Albert Odhiambo was an employee of the respondents. The respondents RW1 stated that the grievant was being paid his salary by the PTA and RW1 had no control over it. RW1 is the school Principal. It is a misconception for him to tell court that the PTA operated outside his control. CW1 told court that infact RW1 used to pay him cash monthly and later the school bursar took over. To state that employment of the grievant was a PTA affair to his exclusion is to admit that he was not in control of the school activities as PTA is parents and Teachers Association and RW1 was one of the teachers if not the Principal. It is therefore this court's finding that the grievant was under the employment of respondents as the body mandated to run the school activities.

The issue of grievant's salary was not addressed by respondents who contend that he was not their employee. However, the grievant told court he was being paid Ksh 2,000/= per month and later Ksh 4,000/= before he was fired. The claimant did not however demonstrate to court how much he was underpaid and for which period. I however find that he was underpaid for all the period he worked and this ought to be corrected.

The grievant sought an order to be reinstated to work. He was terminated on 13th September 2011 since it is now within 3 years from the time he was terminated, I order him reinstated as a guard accordingly within 1 month from the date of this judgment. He should be paid his salary withheld from the time of termination to-date. The respondents to pay costs of this suit.

HELLEN S. WASILWA

JUDGE

17/9/2014

Appearances:-

Joseph Okwachi for claimant present

Respondents absent

CC. Wamache