



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1182 OF 2013.

AMALGAMATED UNION OF KENYA

METAL WORKERSCLAIMANT

VERSUS

UNITY AUTO GARAGE (NRB) LIMITED RESPONDENT

RULING

This is a ruling with regard to the claimant Notice of Motion dated 24th July 2013 brought under section 73, 74 and 80 of the Labour Relations Act, and section 12 of the Labour Institutions Act, seeking stay on revocation of Gazette No. 14722 of 19th October 2012 or the recognition agreement between the parties herein and an order directing the respondent to continue deducting union dues from all employees who have enrolled with them on a check off and remit the dues to the claimant. The application is supported by the annexed affidavit Justus Maina Otakwa the claimant's Secretary General.

The respondent filed their response and the Affidavit of Mohammed Rashid. The claimant filed their undated Supplementary Affidavit on 15th August 2013.

The application is on the grounds that the respondent has refused to abide by the minister order to remit union dues to the claimant and opted to pursue the matter through Kenya Motor Repairers Association, which is not a party to the order and thus a third party to the recognition agreement and Collective Bargaining Agreement (CBA) as between the parties herein. That the Kenya Motor Repairers Association (Association) is not a registered trade union and not allowed to handle labour matters and thus the action of the respondent not to remit union dues is contrary to the law.

That the claimant being a Trade union has a Recognition Agreement and a CBA with the respondent and through Kenya Gazette Notice dated 19th October 2012 the Minister for Labour did issue the notice for the same. That the respondent does not want the employees to be in the claimant union and thus applied to revoke the recognition agreement as well as the Gazette Notice of the Minister for Labour. That the respondent is therefore in breach of section 49(3) and 82 of the Labour Relations Act and Article 41 of the Constitution.

In response the respondent stated that the requirements set out under section 49(2) of the Labour Relations Act are that the minister should request the employer to sign on the agency fee gazette notice attached with a list of employees affected and specifying the amounts to be deducted and that this was not done. For this the respondent has written to the Minister seeking due process be followed as the issuance of Gazette Notice No. 14722 of 19th October 2012 was not proper. That only 8 employees are affected out of the 52 employees of the respondent and this is not a percentage stipulated in law as under section 51(1)

of the Labour Relations Act.

The claimant further submitted that under section 48 of the Labour Relations Act, Union Dues can be deducted but in this case, on 19th July 2013, the respondent wrote to the Minister to revoke the gazette notice on deductions due to the claimant despite the recognition agreement and CBA in force between the parties herein. Despite the respondent being responsible for the deduction of dues, the Association wrote to the Minister even though they are not registered as a Trade Union by the Registrar of Trade Unions. That apart from the 8 employees noted, there are 19 check offs but the respondent has refused to comply.

In response, the respondent submitted that the orders that the claimants seek are pre-mature as the claimant is seeking for a stay of revocation of GN No.14722 of 19th October 2012, which is still in force and thus there is nothing to be stayed. The respondent has not failed to made deductions but the question of the legality of the GN must be addressed and the respondent has written to the Minister in this regard. that there was a CBA that has expired, some employees have left and the claimant lack the required percentage to enjoy the status contemplated for deduction of agency fees.

Where there is a Recognition Agreement or a CBA between an employer and a Trade Union, like the case is between the claimant and respondent herein, this create the terms and conditions under which these parties are to relate. Part of the terms relate to the recognition by the employer that there are unionised employees and part of their unionisation responsibility is to pay their trade union dues, a payment made to the Union by a member. In this regard, a Trade Union is supposed to request the Minister to issue an order directing the employer of more than 5 employees belonging to the Union as stipulated under section 48 of the Labour Relations Act. At section 48(2)(a) and (b) an employer is directed to;

(a) deduct trade union dues from the wages of its members; and

(b) pay monies so deducted –

(i) into a specified account of the trade union; or

(ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.

In law, where there are 5 employees and more who the Minister has directed that their union dues be deducted and deposited with their union, the employer should comply, unless any such employees resign and give a written notice or the Minister varies such directions for deductions.

For the Minister to issue directions of trade union dues remittance by the employer, this must be in compliance with a CBA already in force and unless it is shown that when the Minister made such directions, the same were obtained through misrepresentation or fraud, or the money is being used for a purpose other than the lawful trade union activities. This is not the case here.

The parties herein have had a CBA and even though this has been cited to have expired, the duty rests on the two parties to the CBA to review it and failure to do so, the CBA previously in force is applicable as under section 59(2) where;

(2) A collective agreement shall continue to be binding on an employer or employees who were parties to the agreement at the time of its commencement and includes members who have resigned from that trade union or employer association.

Where there is a dispute and one party to the CBA require clarification as to the nature, effect and requirements as to the nature of orders made by the Minister with respect to union dues deductions, then such a party can make the necessary request to the Minister. In this case, where the respondent has contested the employees eligible for deductions and remittance to the claimant, I find there is justification in writing to the Minister but in the interim, the respondent is bound to follow the orders as directed by the Minister and publicised as under the Gazette Notice No. 14722.

With regard to the application before court, I make the following directions;

- a. **The respondent, as the employer is hereby directed to comply with the requirements as outlined in the Gazette Notice No. 14722 of 19th October 2012, pending the clarification noted herein from the Minister responsible for Labour in Kenya.**
- b. **Costs in the cause.**

Delivered in open Court this 16th day of September 2013.

M. Mbaru

Judge

In the presence of

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