

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 094 OF 2015
(ARISING FROM MGLSD NO. 229/2015)**

UGANDA ELECTRICITY ALLIANCE WORKERS UNION.....CLAIMANT

AND

UGANDA ELECTRICITY TRANSMISSION COMPANY LTD.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa Nganzi
3. Mr. F. X. Mubuke

AWARD

Brief Background:

The claimant is a workers Union to which the majority of the workers in the respondent company subscribed as members. Following government policy the respondent took over the assets and liabilities of Uganda Electricity Board where most of the workers in the claimant Union had been working.

According to the claimant whereas during the Uganda Electricity Board period the workers were automatically members of the union, currently they are required to join by consent and are also free to withdraw from the union as individuals.

This being the case, both the claimant and the respondent entered into a recognition agreement which spelt out (inter alia) procedures as to how the workers of the respondent could join or withdraw from the claimant union. This agreement was executed on 19/12/2003.

For reasons not disclosed, on 30/09/2013, 6 workers on behalf of 131 employees petitioned the management of the respondent to withdraw recognition of the claimant and to stop payment of the employee's subscription to the claimant union but instead deposit the same on a suspense account until the Union was fully constituted.

In 2014 a letter of withdrawal was addressed to the General Secretary of the claimant signed by five of the above members. To the letter was attached individual withdraw forms purportedly signed by each individual signifying withdrawal from the Union. This letter was received by one Nabwire on 15/07/2014.

Earlier on 2/7/2014, five of the interim committee members wrote to the Human Resource Manager of the respondent to inform him/her of the cessation of the members from the Union and attached individual withdrawal of authority to deduct the subscription to the claimant union.

The claimant contested the method used by the members to withdraw from the union and contended that it contravened the provisions of the recognition and Bargaining agreement. Meetings and correspondences in an attempt to resolve the issue failed and when the matter was brought to a labour officer it was not resolved either, and was referred to this court under **Section 5 of the Labour Disputes (Arbitration and Settlement) Act 2006.**

ISSUES

1. Whether the respondent breached the agreement on recognition procedures by failing to remit the monthly subscription fee?
2. Whether the respondent interfered with the administration of the claimant's work as a Union?
3. Whether the claimant is entitled to the remedies sought?

EVIDENCE

The claimant adduced evidence from one Amiti Tom, the General Secretary, who testified that after the respondent stopped remitting the subscription of the members he, on 18/05/2014 demanded that the respondent remits the same and indeed money owed up to August 2014 was paid to the claimant Union. He testified that on 2/7/2014 he received communication from a purported interim committee with attachments of what he called unofficial withdraw forms. From his evidence this committee was illegal and the forms were not proper for the purpose they were meant to serve i.e. withdrawing from the claimant union. Despite further communication to the respondent about remitting the subscription dues of the members, the respondent refused but instead got involved in trying to resolve the matter in vain which according to the claimant constituted interference into the governance issues of the claimant.

The respondent adduced evidence from two witnesses. The first witness was one Fredrick Zesooli who testified that the respondent was expected to deduct monthly subscription from its workers who were in the claimant union and remit the same to the union. He also testified that when 131 members wrote to the Secretary General withdrawing from the union and the Secretary General acknowledged receipt of the same, he proposed a meeting for an amicable settlement which sat on 6/8/2014 and later it was agreed that new serialized forms be provided by the union to formalize the withdrawal.

The members withdrawing from the union in October informed the respondent that the claimant had not adhered to the agreement and thereafter the respondent stopped remitting the money for subscription to the claimant. According to him the respondent was justified in not remitting union subscription of the employees who had communicated their withdrawal.

The second witness of the respondent was one Ssamanya Mugoya who testified that he was a member of the interim committee of the claimant union and that on 30/9/2013, 131 members

submitted a petition to the claimant with grievances concerning the union administration and seeking to withdraw. According to him the petition was never handled by the claimant. Later on in July 2014, 131 members informed the claimant of their withdrawal and signed individual letters for this purpose upon which they were informed by the Secretary General of the claimant that the letters were not sufficient. After several correspondences and meetings, it was agreed that serialized forms be provided but due to the delay of the claimant to provide the same, the members decided that such serialized forms be delivered to the ETCL Principle Legal Officer not later than March 2015 and that the legal office of the respondent would return them to the claimant but this was rejected by the claimant. Following rejection of this proposal, the members decided that the forms originally signed before 6/8/2014 were to be taken as effective withdrawal from the union.

SUBMISSIONS

It was submitted for the claimant that the **recognition agreement in Article 3(a)** provided for full recognition of the claimant union as a representative of the interests of the employees and that **Article 3(b)** prohibited management from dealing with any other body. It was the claimant's submission that the **Labour Unions check off regulations No. 06/2011** providing for deductions of employee's subscriptions were as mandatory as **Article 10 of the recognition agreement** and that therefore it was in breach of the agreement when the respondent relied on a letter of disgruntled employees to stop remitting the subscription. It was submitted that the petition of 30/09/2013 signed by UETC Union members was never copied to the Union and that UETC could never be taken as a Union. It was the submission of the claimant that the letter addressed to the secretary of the claimant was the same letter addressed to the Human Resource Manager of the respondent and it was on the basis of this letter that the Secretary General of the claimant wrote a letter (**annexure 5 claimants documents**) requesting for a meeting although by this time the respondent had already withheld the subscriptions. It was the submission of the claimant that by refusing to remit union dues by virtue of a letter signed by unauthorized people and by dealing with an unregistered union, whose intention was to kill the claimant union and leave workers unprotected, the respondent interfered in the affairs of the claimant. According to counsel for the claimant, the respondent should have referred the workers back to the union which had a dispute mechanism procedure as prescribed at **page 158-289 of R-6 Resp. documents**. As far as the claimant was concerned the 131 workers were still union members since no formal withdrawal was witnessed by a member of the union and since the Secretary General was not given 30 days notice.

For the respondent, it was submitted that, **under Article 10(c) and (6), of the Recognition Agreement** the respondent could only deduct subscription after the employees had consented to the same in writing by filling a **form annexure I, claimant's documents** which they did not do. Counsel referred this court to **section 44 of the Employment Act and the Labour Unions check off regulations, regulation 2(2)**. Counsel submitted therefore that the deduction of the subscription was illegal and the claimant had no right to claim any more of the same.

In the submission of the respondent, **regulation 3(1) of the Labour Union check off regulations** does not prescribe any particular or specific form and the number of notices in **R3 and R4 in the respondent's trial bundle** issued by the disgruntled members were sufficient 30 day notices and that upon receiving a letter from these members the respondent was justified to halt the deductions. It was further submitted that under **Article 10(d) of the recognition agreement**, the withdrawal was to be in the presence of the respondent and not the claimant.

Counsel argued that nothing showed that any of the members had been coerced to withdraw from the Union and that failure to witness the form should not be a hindrance to substantive justice of persons withdrawing from the Union.

It was argued that the respondent only got involved after 14/7/2014 when the disgruntled members wrote **annexure 5** and therefore this could not be referred to as interference in the affairs of the Union.

DECISION OF COURT

The first issue to decide is **whether the respondent breached the Bargaining and Recognition agreement**.

It is not in contention that before 30/9/2013 the majority of employees if not all of them were subscribers to the respondent Union. It can be safely said that the Union was working for the interest of the workers as their representative as far as labour rights and issues affecting them were concerned. It is not disclosed how they became members of the union or whether there were any procedures to be complied with before joining the Union at the time they joined. We believe the testimony of the claimant through CLW1 that employees were originally in the Uganda Electricity Board and that there were no procedures of joining the Union but once they were employees they automatically became members of the union and their subscriptions therefore were automatically deducted from their salary without necessarily any formal consent from each of them. Besides there was no evidence to suggest that before the respondent took over from UEB it was a requirement for the employees to formally become members of the Union thus leaving the earlier arrangement intact. It is therefore not tenable for the respondent to argue that since the employees did not consent in writing to deduct their subscription fees from their salaries, the deductions were illegal and that the claimant could not be seen or be heard to say that more deductions be made.

The Employment Act referred to by the respondent, particularly **Sections 49(2) and 44, and regulation 2(2) of 2011 of the Labour Unions regulations** were enacted in 2006 long after the employees of UEB were transferred to UETC where these issues became controversial. We form the opinion that the operation of the law cited above did not make void the arrangements operating before in as far as deduction of part of salary of employees for the subscription of membership was concerned.

We accept the submission of counsel for the claimant that the process of joining the claimant union was not in issues in the instant case. Even then, none of the disgruntled members

contended that the deductions made earlier were contrary to the law. The issue in the case before us relates to cessation or withdrawal from the Union and it does not relate to enlisting membership into the Union. It is clear that by 19th December 2003 when the recognition agreement was signed all the disgruntled employees were members of the Union and until 30/9/2013, for over 10 years, there were no issues as regards deductions to the Union.

The recognition agreement provides clearly for a voluntary check-off system i.e. voluntary acceptance to have salary deducted and paid to the claimant Union. Under Article 10 (d) of the Agreement it is provided:

"Each individual worker shall be entitled to withdraw his/her authority to check off at any time a copy of which is appendix B in the presence of an authorized representative of the company. Such withdraw to be effective from the end of the succeeding pay period(i.e if withdraw is signed one month the deduction will cease next month.) A copy of each withdraw form shall be given to the Union"

Article 10(a) of the same agreement provides:

"The company shall continue with voluntary check off system being an agreement where the company deducts from unionisable employees salary/wages union monthly subscriptions as provided for in the Union Constitution unless a unionisable employee on whose account the deduction is made shall have authorized in writing on a special form the company not to do so"

Article 10(b) provides

" The acceptance of the check-off by each individual worker shall be entirely voluntary. A copy of the form is appendix A."

Appendix A was meant to authorize the deductions. As we have already pointed out the deductions were not an issue until 10 years after signing of the agreement. We suppose the Union did not implement this provision of the agreement because the employees having been absorbed from UEB and having been contributing to the union through the check-off system, there was no need to provide the employees with this form. They had by implication authorized the deductions. As already alluded to earlier in this award, this failure on the part of the claimant did not invalidate or make void the transactions on the employees' accounts reflecting such deductions.

Appendix B was meant to withdraw the authority granted on appendix 'A' and the agreement is categorical that it had to be witnessed by an authorized representative of the company.

We note however that both appendix 'A' and appendix 'B' are drafted in such a way that they are addressed to the Human Resource Manager of the respondent and are to be witnessed by a branch Secretary (of the claimant union). In our considered opinion the fact that the forms are addressed to the Human resource Manager and witnessed by the branch secretary of the union is not a fundamental derogation from the provisions of the Bargaining Agreement. The intention of the parties in the agreement as we discern it , was that a senior member of the

respondent be aware that a worker intended to no longer be a party to the check off system. The requirement of the branch secretary to be party as well did not prejudice the interest of anyone under the agreement but only enhanced transparency in the implementation of the Agreement. It catered for the interests of the claimant who was a party to the Agreement and who would be affected in case of the actual withdrawal of the workers mandate.

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We have looked at the **Labour Unions (check off) Regulations statutory instrument 2011 No. 60**

Section 3 thereof provides

- (1) An employee may withdraw from participating in the check off system by giving thirty days' notice in writing to the Secretary General and a copy to the Labour officer.**
- (2) The Secretary General shall within 30 days from receipt of the notice in writing inform the employer in writing.**
- (3) An employer on receiving a notice shall stop deducting money from the employee's salary or wages.**
- (4) Where an employee withdraws from participating in the check-off system, he or she shall cease to be a member of the union.**

The issue whether or not the respondent breached the agreement by failing to remit the fees will only be resolved by digesting the procedure of the workers withdrawing from the check-off system as provided by regulations above mentioned vis-à-vis the procedure adopted by the said workers.

The labour unions check-off regulations cited above in regulation one provides for a written notice of 30 days copied to the Labour Officer.

In the submission of counsel for the respondent the letters of 2/7/2014 (R3 and R4) issued by disgruntled members were sufficient notice.

R3 is a letter addressed to the secretary General signed by an interim committee of 5 members and attached are withdrawal letters individually signed by each of the members. The date of the letter is not very clear but the table of contents of the documents of the respondent show that it is dated 2/7/2014. The letter is received by one Nabwire Rebecca on 15/07/2014. Our intuition suggest that Nabwire is the Commissioner Labour as shown on the document. on the face of the document it is not clear if the General Secretary received it and when he received it.

R4 are withdraw forms signed by each of the disgruntled members but there is nothing to show that they were received by the Secretary General.

It was argued that the letter dated 14/7/2014 was evidence that the claimant was aware of the notices and that upon receiving the said letter the respondent was justified in stopping the remittances. This letter is addressed to HR and Admin. manager of the respondent and it acknowledges receipt of withdraw forms by 131 members, out of 160 members, and proposes a meeting to verify the 131 members. **Was this acknowledgement of receipt of notice to withdraw from the check-off system as provided for under regulation I of the Labour Unions check-off regulations?**

Counsel for the claimant argued that even before this letter was written, the respondent had already stopped deductions and remittances of the workers to the Union. We agree with this submission since the letter dated 8/05/2014 addressed to the Human Resource/Administration from the claimant was wondering why dues of February-April 2014 had not been credited to the claimant's account. It is only logical therefore to conclude that the respondent stopped the deductions and remittances by virtue of a petition of the disgruntled members dated 30/09/2013.

There is nothing in the labour unions check off regulations to suggest that a petition to management by workers withdrawing from a Union mandates management to stop deductions and remittances of Union dues by management.). It is very clear from **regulations 1,2 and 3 of the Labour Unions check-off regulations** that it is only by a letter from the Secretary General of the Union that Management can stop such deductions and remittances. It was therefore illegal and improper for the respondent to have withheld deductions of the months of February-April 2014. Under the Labour Union check-off regulations the Union members have no capacity to cause stoppage of the deductions and remittances and management has no authority whatsoever to act on instructions of the union members.

Of what effect then was the letter of 14/7/2014 from the Secretary General?

This letter questioned the use of certain forms and the use of an interim committee to communicate the withdrawal from the check off system and the union. We agree with the submission of counsel for the respondent that the Labour Unions check off regulations do not specify any particular type of withdraw forms. The emphasis is on the Secretary informing management.

However, the recognition and negotiation agreement signed by both parties provides for a form **"Annexure B"** addressed to management and witnessed by a representative of the respondent. It was the submission of the claimant that the members having not filled the proper forms, management could not effectively stop the deductions. **"Appendix B"** is a withdrawal from participating in the check-off system and effectively giving authority to the employer to stop the deductions. As already discussed in this Award, although Article, 10(a) of the recognition agreement does not provide for the witnessing of any member of the union, the provision of the same does not abrogate or distort the agreement. Instead we form the view that it operationalises the same transparently.

Consequently it is our finding that although the labour unions check-off system do not provide for a specific form to be filled, both parties having been party to the bargaining agreement of which appendix B is part and parcel ,none of them could run away from it.

Whereas it is true that the recognition agreement recognizes the claimant as sole representative of the unionized workers of the respondent, we do not accept the contention of the claimant that this by itself prevented the same workers from organizing themselves in case there were issues to do with their own Labour union.

Consequently unless there was evidence to suggest that the interim committee was fraudulently organized and that it never acted on behalf of the others, this court has no reason to conclude that the said committee was not acting in the interest of all the members. It was incumbent upon the claimant to produce evidence to the contrary of what the said committee presented. This could have been done by calling some of the workers to tell court about the fraudulent intentions of the said committee. It is therefore not possible for this court on the evidence available to conclude that the interim committee had no capacity to petition on behalf of the rest. We form the opinion that the fact that it is this committee which communicated to the Secretary General on 14/7/2014 could not vitiate the fact that the union had acknowledged receipt of the forms claiming withdraw of 131 members from the union. The only question is whether the forms attached were the proper ones so as to constitute notice in accordance with **Rule I of the Labour check-off regulations**.

It is clear from the evidence that the communication of 14/7/2014 to the management of the respondent proposed a meeting to resolve the impasse which meeting was convened on 6/08/2014.

Although the evidence is short of the actual minutes of the meeting, at page 293 of the respondent's list of documents, a list of 20 people appear to have attended this meeting including the General Secretary of the claimant and other members of the union.

Evidence on the record suggests that it was agreed by both parties that standardized, serialized forms be distributed by the claimant for the members to fill and sign so as to effectively withdraw from the union. According to the Managing Director of the respondent (in his communication to the General Secretary of the claimant dated 13/10/2014) the claimant had not implemented what had been agreed. Interestingly, the MD quoted a letter that he had received from the disgruntled members but this letter is not anywhere in the evidence.

Subsequently on 18/3/2015, the interim committee of 6 members is reported to have resolved to sign the withdrawal forms delivered to the Principle legal officer of the respondent not later than 24/03/2015.

On 24/03/2015, there is communication from the advocates of the claimant objecting to the suggestion that the forms be delivered to the legal officer of the respondent. Instead the claimant preferred to distribute the withdrawal forms to her branch officers who would avail them to the members who wished to withdraw. This communication gave the names of the Union branch members including their telephone numbers to which the Managing Director of the respondent replied on 21/4/2015 to the effect that the dissenting members had agreed to

sign the forms but only if the said forms would be availed at a central place in Kampala at UETCL Lugogo Office.

As intimated earlier the signing of the secession forms was a necessary process. It was expected that within 30 days of the receipt of the notice by the Secretary General the disgruntled workers would have individually signed the proper secession forms after which the Secretary General of the claimant would have informed the respondent who would then effect the check off system thereby closing membership of the disgruntled workers to the claimant Union.

We must note however that the beginning of the withdraw process was illegally started by the petition of the disgruntled workers to the respondent instead of a notice to the Secretary General. The letter of 14/7/2014 from the Secretary General of the claimant and the subsequent meeting as well as the various letters from the advocates of the claimant and the Managing Director as well as the interim committee of the disgruntled members of the Claimant Union were all an attempt to regulate or legalize the process of withdraw from the claimant Union.

It seems to us that **regulation 3 of the Labour Unions (check-off regulations)** did not envisage almost a whole membership withdrawing from the Union at the same time; Indeed we as well think that for all the membership of the union to withdraw at the same time, there must have been an underlying cause which could best be explained by either the management of the respondent or the individual disgruntled members. No such cause or reason was revealed in any of the exchanges either between management and the union, the disgruntled members and the Union or disgruntled members and management. This is why the claimant union suspected that management was instigating the workers against the union. It is the same reason that the claimant union suggested that there be a verification exercise of the members who were withdrawing by each of them signing a withdrawal form before a union branch representative member of the claimant union. This proposal was flatly objected to by the interim committee by letter **(R13, pg 99 respondent's documents) dated 10/4/2015** addressed to the Deputy CEO of the respondent although the Managing Director on 21/4/2015, by letter addressed to the advocates of the claimants **(R14 pg 300, respondents documents)** informed them that the dissenting workers had agreed to sign the withdraw forms only if they were brought to a central location in Lugogo UETL offices.

No evidence was adduced by the respondent to show that the workers signed these withdrawal forms as agreed. Having come to the position that APPENDIX B was part and parcel of the Recognition and Bargaining agreement it follows that before effectively withdrawing from the check off system one must have signed off the same forms. The contention of the respondent is that they did not remit the fees because the workers had withdrawn from the union. In the submission of the respondent, it was contended that since the workers had not in the first place signed a form (appendix 'A' to the recognition and negotiation agreement in claimant's list of documents) authorizing the deductions, the claimant had no business to insist that the deductions continue once the workers had withdrawn from the union. Counsel relied on **Section 44 of the Employment Act** which provides **"Except where it is expressly provided by law, no person may receive the wages due to any employee on behalf of that employee without the written permission of the employee to whom the wages are due."**

It was the submission of counsel for the respondent that, in the absence of authority from the workers to deduct their money in favour of the claimant, the continued deductions were illegal as against **section 49(2) of the Employment Act** which provides

“The General Secretary of a labour union or his or her representative may issue to every employer who employs any person who is a member of a labour union a written notice attached with the written consent of the respective employee requiring the employer –

(a) To deduct from the wages of his or her employees who are members of the labour union such sums specified as union dues in the notice, and such deductions shall be made at the periods specified in the notice; and

(b) To pay the labour union the sum deducted accordance with this section.

Counsel also relied on the **labour union (check off) regulations 2011, regulation 2(2) with states:**

“A deduction shall not be made from the salary or wages of an employee unless he/or she has signified his or her consent in writing....

As earlier discussed, it is our position that the consent to deduct the dues from the members was given by the members at the time they joined the union. . The contention of the respondent that the deductions were contrary to the labour (check-off) regulations, 2011, regulation 2(2) or **section 49(2) and section 44 of the Employment Act** is therefore misconceived and is not acceptable to us.

In our interpretation of **regulation 3 of the Labour Unions check off regulations 2011** an employee ceases to be a member of a Labour Union only after properly withdrawing from the check off system by notifying the Secretary General who in return informs management. The only question therefore is **whether the respondent stopped remittances after the concerned workers withdrew from participating in the check off system as provided for in regulation 3 of the labour Unions and (check off) regulations, 2011.**

As already intimated earlier on in this ruling the petition to withdraw dated 30/9/2013 was originated by a committee of 6 members addressed to the Chief Executive Officer/Managing Director of the respondent which was contrary to the above regulation as evidenced by a letter from the claimant dated 8/5/2014. It is clear to us that the respondent based their non-remittance of the dues on this illegal petition. The attempts to legitimize it were frustrated by failure of the disgruntled workers to sign off the forms after the secretary General had acknowledged their intentions.

There was no basis for the disgruntled members to insist that they could only sign the forms if they were in a central place in Kampala when it was not disputed that there were members stationed at various branches in the country . We have no doubt that the said forms were availed at the respective branches but none of the members picked them .They instead resolved that the forms attached to the petition were sufficient. Having declared that the petition was illegal it is not possible for this court to say that the attachments were legal. It was only the fresh forms signed after receipt of the notice of withdraw by the Secretary General that could legitimize the petition.

Consequently the non-remittance of the union dues based on the illegal petition was itself illegal. The fact that the Secretary General of the claimant in a letter dated 14/7/2014 recognized receipt of the said withdraw forms did not in our view legitimize the petition or the non-remittance of the union dues since he raised questions about their authenticity.

Ordinarily this recognition of the receipt of withdraw forms would have been taken to be notice by members in accordance with regulation 3 of the regulations cited above only if the same Secretary General had not raised a number of issues which had to be resolved first. This would mean that 30 days from this date, the Secretary General would inform the respondent of this withdraw upon which the respondent would stop deducting the union dues thus ending membership of the disgruntled members to the claimant union. Instead, the respondent continued with the non-remittance of the union dues on the basis that the disgruntled members had withdrawn their consent to have their wages deducted. In our view, this only amounted to perpetuating an illegality. The non-remittance of the union dues could only be effective with a notice to the respondent from the claimant that the members had withdrawn from the check off system.

Consequently, since according to regulation 3(supra), the employer is only expected to stop deducting the Union dues (and therefore remitting it to the Union) only by a notice from the Secretary General after 30 days of notification by the members intending to withdraw their dues, and since the process as discussed above was constrained by irregularities, we find that the respondent contravened not only the Collective Bargaining Agreement but also the labour unions (check off) regulations 2011, when it stopped remitting the union dues to the claimant basing on the fact that the workers had withdrawn their consent rather than on the basis that the Secretary General had communicated the said withdrawal. The labour Union (check off) regulations in our view deliberately in regulation 3 excluded direct contact between the employer and the workers and the respondent was therefore not entitled to base the non-remittance on the direct communication from the workers. The first issue is resolved in the affirmative.

The second issue is **whether the respondent interfered with the claimant's work.**

It was the submission of the claimant that by refusing to remit Union dues and by stopping deductions based on a letter of people not authorised to represent the claimant the respondent interfered with the claimant's work. It was submitted that the intention was to kill the union and leave the workers unprotected and at the mercy of the respondent. According to the claimant the respondent should have referred the petitioners back to the union who had a dispute resolution mechanism.

In reply the respondent submitted that upon receiving a letter from the Secretary General of the claimant dated 14/7/2014 acknowledging receipt of the withdrawal of the disgruntled members, there was justification for the respondent to stop deduction and remittance of the union dues. It was argued that no evidence was allowed to prove that any one of the workers had been coerced or forced to withdraw and that the respondent only got involved when the claimant by letter dated 14/7/2014 requested them to be involved and this could not have been interference with the affairs of the union.

Interference is the act of intruding or getting involved in the internal affairs of somebody else. When two people are fighting and one separates them he is said to have stopped the fighting by interfering.

Interference may occur either by invitation of the party or parties involved or by self-invitation or invasion. Depending on the nature and circumstances existing, interference may be for better or for worse. It may be for selfish reasons or for genuine reasons.

Section 4 and 5 of the Labour Unions Act, 2006 provides:

“4. Employer not to interfere with the right of association.

An employer shall not

- (a) Interfere with, restrain or coerce an employee in the exercise of his or her rights guaranteed under this Act.
- (b) Interfere with the formation of a labour union or with the administration of a registered organization.
- (c) Discriminate in regard to the hire, tenure or any terms or conditions of employment in order to discourage membership in a labour union.
- (d) Discharge an employee on the account of his or her lawful involvement or proposed lawful involvement in the activities of a labour union, including his or her participation in Industrial action arising in connection with a labour dispute and not contravention of the Labour Disputes (Arbitration and Settlement) Act 2006; and
- (e) Prevent or otherwise hinder a labour union official from having access to his or her employee or employee’s representatives or otherwise omit to accord any labour union official facilities to enable him or her to discharge their responsibilities promptly and efficiently.

5. Offence on contravention of section 4

An employer who contravenes **section 4** commits an offence and –

- (a) Is liable, on conviction, to a fine not exceeding ninety six currency points of imprisonment for a term not exceeding four years, or to both; and
- (b) In case of a continuous offence, is liable, on conviction, to a fine of two currency points for every day of part of a day during which the offence continues.

It seems to us that contravention of **section 4** above leads to commission of a criminal offence. Although it may not have been intended by the legislature that the standard of proof be as in the ordinary criminal matters under the penal code, we form the opinion that the standard of proof called for under this **section** is higher than in the ordinary civil matters. It is higher than on the balance of probability since the section provides for an option of imprisonment.

In the instant case evidence was led to show that there was an arrangement between the parties for the respondent to deduct an agreed sum of money from the workers of the respondent and remit it to the claimant to whom the said workers subscribed as members. This was provided for in the **Bargaining and Negotiation agreement** which was rooted in the **Labour Unions Act** both of which provided for how this arrangement could be stopped in case the workers were no longer interested in the claimant.

It was disclosed in the evidence that the respondent acting on a petition by a committee of 6 members stopped the remittance to the claimant yet it was provided that this could only be done at the instance of the claimant informing the respondent as per regulation 3 of the regulations above mentioned. We tend to agree with the submission of the claimant that on receipt of the petition by the disgruntled members, the respondent ought to have guided the petitioners on the provisions of the Labour Unions (check off) regulations that provides for a notice of 30 days given to the Union.

The question is **whether the fact of disregarding these regulations and acting on the petition by concluding that the petitioners had withdrawn their membership to the claimant and thereby stopping remittances of the union dues, was in contravention of Section 4 of the Employment Act** above cited.

For us to answer this question, we need to explore the intention of the employer. According to the claimant the intention of the respondent was to kill the union and leave the workers at its mercy. The evidence of RW1, Fredrick Charles Zesooli, in cross examination was that the deductions and non-remittance of the Union dues stopped when the disgruntled members decided they no longer wanted to be members of the claimant union. He particularly mentioned a letter written by the Managing Director to the Secretary General of the claimant dated 13/10/2014 which (among others, stated

“Given reported lack of progress on the side of the union to resolve this matter, I wish to inform you that UETCL may be compelled to suspend remittance of Union dues deducted from salary of members of the union from UETCL. This would be effective from 31/10/2014.”

Evidence on the record suggests that earlier on there was a meeting which had been requested for by the claimant and which was meant to reconcile and resolve the dispute as to what procedures should be followed for the workers to be able to effectively withdraw from the Union. Given this state of affairs and the fact that none of the disgruntled members came to prove that he/she was coerced with duress to sign the withdraw forms attached to the petition, it is our finding that although the respondent breached the Bargaining and Negotiation Agreement when they relied on the petition, it was in the belief that the workers had properly withdrawn from the union and that therefore it was right to stop the deductions and the remittances of the dues to claimant. The intention to kill the Union in our view was not proved. Consequently the evidence was short of proving on the required standard that the respondent had interfered with the right of association within the meaning of **Section 4 of the Employment Act**. The second issue is decided in the negative.

The third issue is whether the interference was actionable.

Given that we have decided that interference was not proved, this issue does not arise. Even then, there were no submissions on the same.

The last issue is whether the claimant is entitled to remedies sought.

- (a) Earlier on in this Award we found that the respondent breached the bargaining and Negotiation Agreement by failing to remit the Union dues. Consequently we grant a declaration that the claimant illegally withheld dues rightly owed to the claimant.
- (b) The claimant prayed for an order for the respondent to remit all dues from September 2014 to date amounting to 5,000,000/= per month. The respondent did not respond to this prayer with in submissions. Evidence was led to show that the respondent deducted the dues but failed to remit the same. A letter from the Managing Director of the respondent dated 13/10/2014 (page 294 of respondent’s list of documents) is to the effect that remittances were to be stopped effective 31/10/2014. In the absence of evidence that the contents of the letter were not implemented, we grant the prayer that all dues owed to the claimant from 2014 to date be remitted to the claimant.

Section 49 of the Employment Act provides

Union dues:

- (1) In this section, the expression “union dues” means any regular or periodic subscription required to be paid by a union member to any labour union of which he or she is a member under the rules, as a condition of his or her membership, but does not include any pay or subscription for a particular object or purpose.
- (2) The General Secretary of a Labour union or his or her representative may issue to every employer who employs any person who is a member of a Labour Union a written notice attached with the written consent of the respective employee, requiring the employer –
 - (a) To deduct from the wages of his or her employees who are members of the labour union such sums specified as union dues in the notice, and such deductions shall be made at the periods specified in the notice, and
 - (b) To pay to the labour union the sums deducted in accordance with this section.
- (3) Where an employer to whom a notice has been given under subsection (2) refuses or fails to comply with the provisions of the notice, he or she shall be liable to pay to the labour union a sum equal to three percent of the total amount of the deduction for each month during which the sums are not paid to the union, the outstanding in addition to the unions dues.

Whether or not the respondent was required to remit the union dues was a subject of these proceedings. The question did not arise from the respondent’s failure to remit the dues after a written notice by the claimant in accordance with **Section 2 of the employment Act** above mentioned. Consequently we decline to grant the prayer of a penalty of 3% per month.

Damages

We decline to award any damages because the claimant has not demonstrated how these could arise, having merely prayed for the same without substantiating how they arose. However because of the inflationary nature of the economy we hereby grant an interest rate of 8 per cent per year from the date of non remittal of the dues till payment in full. No order as to costs is made.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists:

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa Nganzi
3. Mr. F.X. Mubuke

Dated 07/03/2019

