



Kenya Union Pre-Primary Education Teachers v Bungoma County Public Service Board & another (Cause E014 of 2024) [2025] KEELRC 2594 (KLR) (29 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2594 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE E014 OF 2024
DN NDERITU, J
SEPTEMBER 29, 2025**

**BETWEEN
KENYA UNION PRE-PRIMARY EDUCATION TEACHERS CLAIMANT
AND
BUNGOMA COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT
COUNTY SECRETARY COUNTY GOVERNMENT OF BUNGOMA 2ND
RESPONDENT**

JUDGMENT

I. Introduction

1. The claimant, a trade union representing workers in the sectors expressed in the name of the union, commenced this cause by way of a statement of claim dated 12th September 2024 seeking for the following reliefs –
 1. That order be and is hereby issued to the respondents forthwith, commence deduction of union dues from all eligible members of the claimant and remit the deducted dues to the claimant’s designated bank account being, Kenya Commercial Bank, Moi Avenue, Nairobi; Account No. 1143084446, within ten days of such deductions.
 2. That order be and is hereby issued to the respondents to compute and pay to into the claimant’s designated bank account, all the union dues not deducted from all the eligible members of the claimant. For avoidance of doubt, deduction of union dues from the 39 members at the rate of Ksh.300 from the month of November 2023 to date and from 102 members with effect from the month of April 2024 to date, be paid to the claimant by the respondents.



3. THAT costs of this suit be provided for by the respondents.
2. As it is the procedure, the statement of claim is accompanied with a verifying affidavit, a list of documents, and copies of the listed documents.
3. The claimant is represented by Samuel A. Opiyo, an officer of the claimant duly authorised to appear as such.
4. Upon service both the respondents filed a joint memorandum of defence dated 5th December 2024 through Simiyu Makokha, the then Bungoma County Attorney. The claim is denied in toto and the court urged to dismiss the same with costs.
5. When the matter came up for virtual hearing on 25th February 2025 the representatives of the parties by consent agreed that the cause be canvassed by way of written submissions.
6. Mr. Opiyo for the claimant filed written submissions dated 14th March 2025 and Mr. Makokha for both the respondents filed written submissions dated 20th March 2025. Mr. Opiyo thereafter, with the leave from the court, replied in a rejoinder/further submission dated 28th April 2025.

II. The Claimant's Case

7. The claimant's case is expressed in the statement of claim, the documents filed, and the written submissions by its representative.
8. In the statement of claim it is pleaded that on 5th October 2023 the claimant requested the 2nd respondent to effect deductions of union dues from 39 members it had recruited. The claimant forwarded the requisite documentation with the necessary details to facilitate the deductions and remittance. A further list of 102 recruited employees was submitted on 22nd March 2024.
9. Copies of the documents submitted in support of the request are attached to the claim in the list of documents filed.
10. The respondents failed, refused, and or neglected to act and or cooperate as requested as a result whereof the claimant reported a dispute to the Minister for Labour.
11. The respondents totally refused to cooperate in the conciliation process leading to collapse of the process.
12. It is the claimant's position that by failing and or refusing to commence the deductions and remittance of the same and failing to cooperate in the conciliation process the respondents violated Sections 48 of the *Labour Relations Act* and Article 41 of *the Constitution*.
13. It is on the basis of the foregoing circumstances and facts that the court is urged to allow the claim and grant the reliefs as sought.

III. The Respondent's Case

14. In their joint memorandum of defence, the respondents state that the claimant failed to avail documents necessary to commence the deductions and more so duly signed consents from the affected employees. It is the respondent's position that the request and demand by the claimant is in contravention of Data Protection Act and untenable in law.
15. Further, it is the respondents' position that the cause by the claimant is incompetent for failing to comply with Section 13A of the *Government Proceedings Act*.



16. For the foregoing reasons the court is urged to dismiss the claim with costs.

IV. Submissions

17. Mr. Opiyo for the claimant submitted that the claimant is a duly registered trade union with the mandate to represent, promote, and protect the rights and interests of its member who are ECDE teachers, in this case under the employ of the County Government of Bungoma.
18. It is submitted that on 5th October 2023 the claimant submitted check-off forms and other documents as per collection order in Legal Notice No. 160 of 2021 for purposes of the respondents effecting deduction and remittance of union dues. Further, the claimant recruited another 102 members and submitted the check-off forms and other supporting documents to the 2nd respondents in a letter dated 22nd March 2024 for purposes of effecting deduction and remittance of the same to the claimant.
19. The respondents failed, refused, and or neglected to respond to the two requests above and as such the claimant reported the dispute to the Minister for Labour under Section 62 of the *Labour Relations Act*. It is submitted that the respondents did not cooperate in the conciliation process and the matter was not resolved and hence the conciliator issued a certificate of unresolved dispute under Section 69(a) of the *Labour Relations Act*.
20. It is the claimant's position that beyond the Form S authorizing deductions from employees, no other proof is required in form of personal letters or consents from the members to the employer. It is submitted that there is no such law and none is cited by the respondents requiring that such letters be authored by the affected employees.
21. Mr. Opiyo cited Kenya Private Universities Workers Union V Mount Kenya University (2025) KEELRC 284 (KLR) where the court held that no personal letters were required from employees besides the Form S for an employer to effect deduction of union dues and remittance of the same to the union. The court is urged to adopt and follow the reasoning in that decision.
22. Further, the claimant relies on the decisions in Modern Soap Factory Ltd V Kenya Shoe & Leather Workers Union (2020) eKLR, Kenya Union of Road Contractors & Civil Engineering Workers V Pride Enterprises Ltd (2025) KLR, & Lochab Brothers Ltd V Transport Union (2024) KECA 965 KLR, all to the effect that a recognition agreement is not a prerequisite to making the deductions and remittance of union dues from members.
23. It is further submitted that by failing and refusing to cooperate and effect the deductions and remittances as per the law the respondents are in violation of fair labour practices envisaged under Article 41 of *the Constitution*.
24. The court is urged to allow the claim as pleaded.
25. Counsel for the respondents submitted that the respondents failed and or refused to accede to the request by the claimant on various grounds as stated in the defence. It is submitted that there is no recognition agreement between the claimant and the respondents; no authorization and or consents from the employees for the deductions was supplied; that Section 48 of the *Labour Relations Act* is in conflict with various provisions of the Data Protection Act in which event the latter prevails; and, that Section 48 of the *Labour Relations Act* is unconstitutional for being in conflict with Article 31(c) & (d) of *the Constitution*.
26. Counsel identified the following issues for determination by the court –
 - a. Whether the claimants are entitled to the reliefs sought in the claim.



b. Who should pay the costs of the claim?

27. In regard to the first issue it is submitted that the claimant failed to demonstrate and prove that Article 41 of *the Constitution* was violated as alleged. It is submitted that the claimant is bound by Section 107 of the *Evidence Act* to prove its case as pleaded and that it failed to discharge that burden.
28. It is further submitted that there is no evidence that the claimant complied with Section 48 of the *Labour Relations Act* before demanding deductions and remittance in regard to the affected employees. It is submitted that in any event nothing obligates the respondents to make the deductions as the employee members are free to remit their contributions directly to the claimant.
29. Further, it is submitted that there is no evidence on record that the alleged employees are indeed members of the claimant.
30. It is submitted that the cause should be dismissed with costs to the respondents.
31. In a rejoinder Mr. Opiyo for the claimant submitted that a recognition agreement is a pre-requisite for collective bargaining but that lack of the same is not a bar to an employer making deductions and remitting union dues. It is further submitted that a recognition agreement can only be initiated once a union has attained 50% plus 1 of the membership with employees of a given entity or body. However, it is emphasized that absence of a recognition agreement is not a bar to deduction and remittance of union dues by an employer.
32. It is submitted that with the due submission of Form S to the respondents no other evidence or consent or letter was required or necessary from the employees for the respondents to commence and effect the deductions and remittances.
33. It is submitted that it is none of the business of the respondents to demand or even to have knowledge of the officials or officers of the claimant as that has absolutely no nexus with the matters now in issue in this cause emanating from the misconduct on the part of the respondents.
34. It is further submitted that there is no evidence or law or decision of court that was availed by the respondents to prove that Section 48 of the *Labour Relations Act* was amended by the Data Protection Act or indeed that the same is unconstitutional or has been declared as such.
35. In regard to union membership of the affected employees, it is submitted that the duly signed Form S by the employees is of itself evidence and proof of such membership. It is submitted that the claimant complied with the law in the entire process and the respondents are only looking for imagined grounds not based on law or evidence to justify their unlawful refusal to do what the law demands of them. The Order by the minister authorizing deductions by the claimant is exhibited.
36. It is submitted that the respondents did not challenge the conciliator's recommendation and no counter-claim has been filed, for example, challenging constitutionality of Section 48 of the *Labour Relations Act*.

V. Issues For Determination

37. The court has carefully and dutifully gone through the pleadings filed, documentary evidence tendered from both sides, and the written submissions filed by the representative of the claimant and counsel for the respondents. The issues in contention between the parties are rather straight forward as can be discerned from the summaries of pleadings and the submissions in the foregoing parts of this judgment.



38. In summary, the claimant recruited a total of 141 employees of the County Government of Bungoma on differs dates in 2023 and 2024. It then forwarded the names of the employees alongside Form S to the respondents for the purposes of effecting deduction of union dues for onward transmission to the claimant.
39. However, the respondents did not act on the request and subsequently the claimant referenced the matter to the Minister for Labour in accordance with Section 62 of the *Labour Relations Act*. The Minister appointed a conciliator but again the respondents are said to have failed and or refused to cooperate as a result of which the conciliator issued a certificate of unresolved dispute leading to the claimant filing this cause in court.
40. On the other hand, the respondents' case is that the claimant failed to supply written consents from the employees and proof of their membership with the claimant. It is also argued that the claimant failed to supply a list of its officials for the Bungoma branch. It is the respondents' argument that Section 48 of the *Labour Relations Act* relied upon by the claimant is unconstitutional. It is further argued by the respondents did not comply with the law and hence the cause is premature and incompetent.
41. Flowing from the foregoing the following issues commend themselves to the court for determination -
 - a. Whether the cause by the claimant has merits as to entitle the claimant to the reliefs sought; and,
 - b. Who should bear the costs of the cause?

VI. Merits Of The Cause

42. The dispute between the parties is rather straightforward and that is why the representatives of both sides rightfully consented and applied to have the matter heard and canvassed by way of written submissions in line with Rule 59 of the Employment and Labour Relations Court (Procedure) Rules.
43. The undisputed evidence on record is that on differs dates in 2023 and 2024 the claimant recruited membership from employees in service of the County Government of Bungoma. However, the respondents failed, refused, and or neglected to engage the claimant over deduction and remittance of union dues culminating with the claimant taking up the matter with the Cabinet Secretary (CS) Ministry of Labour and Social Protection. Even thereafter the respondents ignored invitations by the appointed conciliator to resolve the dispute.
44. Ultimately, on 2nd August 2024 the conciliator issued a certificate to the effect that the refusal by the respondent to cooperate had resulted in failure of the parties to resolve the dispute. In her recommendation, the conciliator stated that –

“Owing to the fact that the union has complied with the requirements of section 48(2) and (3) of the *Labour Relations Act* 2007, the employer is therefore compelled to effect and remit deductions from the potential union sable employees who duly signed and acknowledged their union membership by signing form (s).

It is my prayer that you accept the recommendations as an amicable solution to the dispute. However, if any of you is not agreeable to the recommendation, then you are free to refer the matter to court for determination.”
45. Section 48 of the *Labour Relations Act* provides as follows –



- (1) In this Part "trade union dues" means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.
 - (2) A trade union may, in the prescribed form, request the Cabinet Secretary to issue an order directing an employer of more than five employees belonging to the union 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.
 - (3) An employer in respect of whom the Cabinet Secretary has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.
 - (4) The Cabinet Secretary may vary an order issued under this section on application by the trade union.
 - (5) An order issued under this section, including an order to vary, revoke or suspend an order, takes effect from the month following the month in which the notice is served on the employer.
 - (6) An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.
 - (7) A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.
 - (8) An employer shall forward a copy of any notice of resignation he receives to the trade union.
46. The above is the law applicable in the circumstances and the evidence presented by the parties in this cause. While the respondents' counsel argued that the above law is in conflict with unspecified provisions of the Data Protection Act and that the same is unconstitutional, no authority or authorities was cited in support of that proposition. It is illustrative that there is no counter-claim or reference or cause from the respondents seeking to declare the above law unconstitutional.
47. The court is not aware of any binding decision that declared the above law unconstitutional and no unconstitutionality can be deciphered as there is none. In fact, there is no conflict between this law and any of the provisions in the Data Protection Act and that explains why counsel for the respondents did not cite any specific sections alleged to be in conflict with Section 48 of the *Labour Relations Act*.
48. From the evidence adduced on record, as summarized in the foregoing parts of this judgment, the claimant complied with the provisions in the above law and submitted all the necessary documents to the respondents for their action. On their part, without any reasonable or probable cause, the respondents failed, refused, and or neglected to act on the request rendering this unnecessary cause to be filed in court.
49. There is no law that requires that members of a union write personal letters of consent to their employer for the commencement of deduction and remittance of union dues. The respondents are the custodians of the employment records of all the employees and as such they had the powers and means to inquire from the employees in case they were in doubt whether the employees or any such number



of them had joined the union. Likewise, there is no law that required the claimant to supply the list of their branch or national officials and or officers for the respondents to act on the request. In any event, such records are public documents that are available with the Registrar of Trade Unions – see *Modern Soap Factory Ltd V Kenya Shoe & Leather Workers Union (2020) eKLR & Lochab Brothers Ltd V Transport Workers Union (2024) KECA 965 KLR*.

50. The duly signed Form S are prima facie evidence that indeed the said employers had joined and are members of the claimant and the respondents were damn wrong in demanding further evidence on a rather mundane issue that the claimant had executed in accordance with the law.
51. The court has perused the documentary evidence filed in court by the claimant in support of the claim and the court is satisfied that the claimant has proved its case to the required standard to warrant the court to grant and issue the orders sought.
52. The refusal by the respondents to engage with the claimant and effect the deduction and remittance of union dues was without any logical and or legal backing. It is conduct that neither inspires nor enhances industrial harmony and peace and the same must be condemned and discouraged. It is against the letter and spirit of Article 41(4) of *the Constitution*.
53. The court has said enough in demonstrating that the claim herein has merits and the same is allowed with costs. The recommendation by the conciliator was right and lawful and the respondents ought to have heeded to the same and acted accordingly. Instead, the respondents adamantly and without any lawful, logical, or reasonable cause failed, refused, and or neglected to comply.
54. This is one matter that was absolutely unnecessary for filing in court and is in the category of those that clog the court system. It is unfortunate that the persons who were supposed and expected to give legal advice to the respondents failed to do so and if at all they did the respondents opted to ignore the same altogether. It is absolutely necessary for the respondents, all and sundry, to realise and acknowledge that trade unions are a creature of the law and it is absolutely necessary to cooperate with them within the law for smooth industrial harmony and peace that is germane for maximum productivity and efficiency.

X.Orders

56. The court makes the following orders in allowing the claim -
 - a. The respondents by themselves, their agents, servants, and or others howsoever, be and are hereby ordered and compelled to commence deduction and remittance of union dues from all employees who are members of the claimant from the next month following the month of delivery of this judgment and remit such deductions to the bank account as provided for by the claimant.
 - b. Costs of the cause to the claimant.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER, 2025.

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DAVID NDERITU

JUDGE

