



Kenya Union Pre-Primary Education Teachers v Vihiga County Public Service Board & another (Cause E009 of 2024) [2025] KEELRC 2616 (KLR) (26 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2616 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E009 OF 2024
DN NDERITU, J
SEPTEMBER 26, 2025**

BETWEEN

KENYA UNION PRE-PRIMARY EDUCATION TEACHERS CLAIMANT

AND

VIHIGA 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 sector expressed in the name of the union, commenced this cause by way of a statement of claim dated 8th April 2024. Subsequently, on 24th October 2024 the claimant filed an amended statement of claim dated 22nd October 2024 seeking for the following reliefs –
 1. That a declaration that the respondent’s decision to stop deduction of union dues in favour of the claimant without providing reasons in writing to the claimant violates the claimant’s right to Fair Administrative Action.
 2. That a declaration be and is hereby issued that the decision of the respondent to stop deduction of union dues and the outright refusal to affect the deductions from members of the claimant union dues is unlawful, arbitrary and therefore null and void.
 3. That this honourable court do order the respondents to deduct union dues from all the 766 members forthwith.
 - 3A. That this honourable court do order the respondents to deduct union dues from all the 764 members recruited by the claimant forthwith.



4. That court be pleased to order the respondents to pay the claimant cumulative union dues which would have been deducted but which they failed to deduct from the month such deductions fell due to date.
 5. That court do order the respondents to pay the deducted union dues into the designated union bank account No.1143xxxxxx held at the Kenya Commercial Bank – Moi Avenue Branch Nairobi within ten days from the time of making such deductions every month and bi-products be transmitted to the union through the union official email address at the end of every month upon making such deductions.
 6. That the respondents do provide for costs of the suit.
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 in court as such.
 4. Upon service both the respondents entered appearance through the Office of the County Attorney by Aggrey Musiega Advocate. A memorandum of response to the amended statement of claim was filed dated 2nd December 2024. The claim is denied in toto and the court urged to dismiss the same with costs.
 5. The response is accompanied with a list of documents and copies thereof, and a list of witnesses. A witness statement by one Caxton Alwende was filed.
 6. When the matter came up for virtual hearing on 4th February, 2025 the representatives of the parties by consent agreed that the cause be canvassed by way of written submissions.
 7. Mr. Opiyo for the claimant filed written submissions dated 11th March 2025 and Ms Shijenje for both the respondents filed written submissions dated 1st April 2025.

II. The Claimant's Case

8. The claimant's case is expressed in the amended statement of claim, the documents filed, and the written submissions by its representative.
9. In the amended statement of claim it is pleaded that the claimant is a duly registered trade union representing the interests of ECDE teachers countrywide.
10. It is further pleaded that on 5th June 2023 the claimant submitted a request to the respondents to start deducting and submitting union dues from 86 of its members working for the County Government of Vihiga and submitted check-off forms to that effect. Subsequently, the claimant submitted a similar request for another 60, 167, and a further 453 employees who joined the union. It is submitted that the respondents failed, refused, and or neglected to act on the request.
11. It is the claimant's case that between September 2023 and March 2024 the respondents made deductions of union dues from 201 of its members in the workforce but unilaterally stopped the same without notice or reason.
12. It is the claimant's case that as at the time of filing the claim in court it had recruited 764 members out of a possible 800 ECDE teachers employed by the respondents.
13. It is further pleaded that in requesting the respondents to make the deductions and remittance of union dues the claimant complied with Section 48 of the [Labour Relations Act](#). It is stated that by stopping



the deductions and remittance of union dues from the 201 employees stated above without notice the respondents violated the claimant's rights under Articles 27, 36, 41, & 47 of *the Constitution* and various provisions in the *Fair Administrative Action Act*.

14. 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

15. In their joint memorandum of response to the amended statement of claim, the respondents state that there is no subsisting recognition agreement between the claimant and the respondents under Section 54 of the *Labour Relations Act*. It is pleaded that there a total of 814 ECDE teachers and as such the number recruited by the claimant falls below the threshold for making deductions and remittance of union dues.
16. It is pleaded that most of the teachers alleged to have been recruited into the membership of the claimant were not recruited as such and that most of those recruited withdrew and or resigned their membership. It is pleaded that if any deductions and remittances were made at any point or at all the same were un-procedural and unlawful.
17. For the foregoing reasons the court is urged to dismiss the claim with costs.

IV. Submissions

18. 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 Vihiga.
19. It is submitted that on 5th June 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 167 members and submitted the check-off forms and other supporting documents to the 2nd respondents in a letter dated 20th March 2024. A further 453 members were recruited and on 20th May 2024 the claimant again submitted to the respondents the necessary documents for purposes of effecting deduction and remittance of union dues to the claimant. It is submitted that in total the claimant had at that point recruited a total of 764 members.
20. It is submitted the respondents effected deductions and remittance from 201 members for the period from September 2023 to February 2024 when the deductions and remittances were unilaterally stopped without notice and or explanation. It is submitted that in December 2024 the respondents resumed deductions from all the 764 members following a court order.
21. It is submitted that Section 48 of the *Labour Relations Act* obligates the respondents to deduct and remit union dues to the claimant and that there is no reason offered by the respondents as to why they did not make deductions and remittances from 232 members of the claimant from February 2024 to date.
22. It is further submitted that the actions of the respondents are in violation and breach of Article 41 of *the Constitution* on fair labour practices. It is further submitted that under Sections 48 & 50 of the *Labour Relations Act* the respondents cannot unilaterally stop deduction and remittance of union dues as they deem fit.



23. On the issue of whether the court should compel the respondents to submit and remit the dues they ought to have effected from the union members, whether they did or did not make such deductions, it is submitted that the court should order and compel them to remit from their own resources as failure to make such an order would render this court a toothless bulldog. It is submitted that under Article 23(3)(e) of *the Constitution* this court has powers to grant appropriate relief in compensation for the injury caused to the claimant by such abuse and violation resulting from unlawful conduct of the respondents. The court is urged to be persuaded by the decision in *Kenya Union of Nurses V Murang'a County Public Service Board & County Government of Murang'a* (2021) eKLR.
24. It is further submitted that the unilateral action by the respondents in stopping deduction and remittance of union dues from the members of the claimant violated the right to fair administrative action under Article 47 of *the Constitution*.
25. The respondents' counsel identified the following issues for determination –
- a. Whether there is an existing recognition agreement between the claimant and the respondent?
 - b. Whether the claimant met the membership threshold of simple majority by the time of filing the suit herein?
 - c. Whether the respondent should pay any cumulative dues not deducted?
 - d. Who is to pay costs?
26. On the first issue it is submitted that Section 54 of the *Labour Relations Act* provides for recognition agreements as a pre-requisite to an employer and a union engagement at whatever level. It is submitted that there was no such agreement between the parties herein and as such any deduction and remittance of union dues was un-procedural and unlawful. It is thus submitted that what the court has been called upon to do by the claimant through this cause is to institute and enforce an illegality.
27. On the second issue it is submitted that Section 54 of the *Labour Relations Act* is clear that an employer shall only recognize a union for purposes of collective bargaining where such a union represents a simple majority of its eligible employees. It is submitted that the respondents have a total of 814 ECDE teachers meaning that simple majority should be about 408 employees. It is submitted that the claimant has not established and proved that it had such membership as at the time of filing this claim in court. It is submitted that as at December 2024 the claimant did not have membership of the simple majority of the employees and when the issue of capacity was raised by the respondents in another matter between the parties, being ELRC No. E007 of 2024, the claimant filed the amended statement of claim in this cause to pre-empt the issue of capacity being raised in this cause as well.
28. It is submitted that it is in those circumstances that the respondents stopped any deductions from any of its employees until a court order was issued on 5th November 2024 directing that deductions and remittances be effected pending the hearing and determination of this cause.
29. It is further submitted that as at the time of the hearing and determination of this cause the exact number of membership of the respondents' employees with the claimant is unknown and unascertainable as most of them have resigned their membership as such.
30. On the third issue it is submitted that an employer can only make deductions and remittance of union dues from willing employees and it would be grossly unfair for the court to order the respondents to remit what they did not deduct from employees. It is submitted that the evidence on record confirms that no deductions of union dues were made from employees for the period from March to November



2024 and that the deductions only resumed in December 2024 following the court order of 5th November 2024.

31. It is submitted that the cause by the claimant is frivolous and bad in law and the court is thus urged to dismiss the same with costs.

V. Issues for Determination

32. 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.
33. Simply put, the claimant purportedly recruited a total of 764 employees of the County Government of Vihiga 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.
34. 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

35. 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.
36. 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 Vihiga.
37. 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.
38. From the evidence adduced on record, as summarized in the foregoing parts of this judgment, the claimant complied with the provisions of Section 48 of the *Labour Relations Act* and submitted all the necessary documents to the respondents for their action. However, it is the respondents' case that most of the employees have resigned from the membership of the claimant. Nonetheless, no evidence of such resignation has been demonstrated and proved in court.
39. For avoidance of doubt, a recognition agreement is not a prerequisite for deduction and remittance of union dues. Rather, a recognition agreement is a prerequisite for collective bargaining. The respondents were thus wrong in failing, refusing, and or neglecting to make the deductions and remittances on the allegation that there was no recognition agreement between them and the claimant.
40. This cause was actuated by the conduct of the respondents through stoppage of deduction and remittance of union dues from the member employees to the claimant. It is conduct that neither inspires nor enhances industrial harmony and peace and the same must be condemned and discouraged. Such conduct is against the letter and spirit of Article 41(4) of *the Constitution*.
41. However, the respondents have admitted and confirmed that they have been making deductions and remittances of union dues since December 2024 following the interim order of the court made on 5th November 2024. The deductions made must be from specific employee members of the claimant.
42. 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 advice altogether. It is necessary for the respondents, all and sundry, to realise and acknowledge that trade unions are a creation of the law and it is absolutely necessary to cooperate with them within the context of the law for smooth industrial harmony and peace that is germane for maximum productivity and efficiency.

X.Orders

43. The court makes the following orders in allowing the claim -
- a. A declaratory order be and is hereby issued that the decision by the respondents to unilaterally stop deduction and remittance of union dues from all or part of its employees who are members of the claimant was wrong, unfair, unlawful, and such action amounted to unfair labour practice.
 - b. The respondents by themselves, their agents, servants, and or others howsoever, be and are hereby ordered and compelled to commence and or continue deduction and remittance of



union dues from all the 764 employees or such number as there are members of the claimant without fail.

- c. That all the deductions made as from December 2024 following the order of the court be remitted and deposited in the claimant's bank account as provided and the evidence in support of such deductions, remittances, and deposits be provided and supplied to the claimant each month via their official email address as provided.
- d. Costs of the cause to the claimant.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 26TH DAY OF SEPTEMBER, 2025.

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DAVID NDERITU

JUDGE

