



REPUBLIC OF KENYA



KENYA LAW
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Kenya Engineering Workers Union v M/S Landmark Holdings (Cause E491 of 2022) [2025] KEELRC 2455 (KLR) (17 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2455 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E491 OF 2022
NJ ABUODHA, J
SEPTEMBER 17, 2025

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

M/S LANDMARK HOLDINGS RESPONDENT

JUDGMENT

1. By a statement of claim dated 4th July, 2022 the claimant pleaded inter alia:-
 - a. That , the Applicant/Claimant did recruit 73 employees of the Respondent herein and forwarded the check-off forms (Form 'S') on four (4) different dates i.e. on 23rd May, 2022 a check off form of 38 employees, bn 30th May, 2022 a Checkoff form of form 12, on 6th June, 2022, a check-off form of 11, 22nd June, 2022 to 73 out of 8.0 unionisable workforce of the Respondent The said check-off forms were accompanied by the Gazzette Notice on deduction.
 - b. That , the Respondent having declined in writing with allegations of her members belonged to. another union went ahead to deduct and forward union dues to a union of her choice even after the alleged employees had withdrawn. She also indicated that she was going to move this Honourable Court for direction.
 - c. That , the Respondent declined to comply with section 48 of the Labour Relations Act, 2007 by refusal to deduct and remit union dues prompting the Claimant to invoke section 62 of the Labour Relations Act, 2007 by reporting a trade dispute to the Labour Ministry which was accepted under reference No. ML/LD/IR/13/30 & 29/2022 and Mr. George Tsimuli of Nyayo House Labour office appointed to conciliate the parties.
 - d. That , the actions of the Respondent herein violates section 19 (f) of the Employment Act, 2007 on deduction of salaries upon request by an employee is violation of her constitutional right.



- e. That , the Respondent actions of refusal to deduct and remit union dues and refusal to sign Recognition Agreement violates section 48 and 54 of the [Labour Relations Act](#), 2007 respectively.
 - f. That , the Respondent actions violates Articles 36, 41 & 47 of the Constitution on freedom of association, freedom to form and or belong to a union of one's choice and fair administrative action.
2. The Claimant therefore prayed for orders among others that:
- i. That the Honourable Court do issue an Order against the Respondent herein to sign the Recognition Agreement within the shortest time frame possible.
 - ii) That the Honourable Court do issue an Order against the Respondent and or her agents not to victimize the Claimant members on grounds of Trade Union activities and or affiliation,
 - iii) That the Honourable Court do issue an Order against the Respondent to pay all the union dues arrears from her Own pocket from the time the Checkoff forms (Form 'S') were served upon her being 2% of the unionisable employees wage bill.
 - iv) That the Honourable Court to issue an Order against the Respondent to comply with section 48 of the [Labour Relations Act](#), 2007 by way of deduction and remittance of union dues monthly from the Claimant members on or before 10th of every following month.
 - v) That the Honourable Court do issue an Order against the Respondent not to negotiate any new terms of employment with any other union other than the Claimant herein on behalf of the Claimant members.
 - vi) THAT the Honourable do issue an Order against the Respondent from deducting either union dues or agency fee from the Claimant members towards any other union other than the Claimant herein.
3. The Respondent filed its Statement of Response dated 25th March, 2024 and averred inter alia:
- a. The Respondent totally denies the allegations contained at paragraph 2.1 of the memorandum of claim save to state that it received copies of check off forms to the effect that some of its employees had joined the Claimant union. That on going through the schedule of names, it was noted that some of the purported members were active members of another union being Kenya Concrete, Structural, Ceramic Tiles, Wood Ply and Interior Designs Workers Union (KCSCW&I). The Claimant is put to strict proof of any other allegation to the contrary.
 - b. The Respondent further avers that on further inquiries some of the alleged members of the Claimant union refuted having joined the membership of the Claimant union insisting that their signatures were forgeries. The Claimant is put to strict proof of any other allegation to the contrary.
 - c. In further response, the Respondent avers that as can be discerned from the check off forms submitted by the Claimant, some of the alleged members names are repeated on different check off forms raising further doubts as to the authenticity of the forms. The Claimant is put to strict proof of any other allegation to the contrary.
 - d. The Respondent denies the allegations contained at paragraph 2.2 of the memorandum of claim in toto save to state that the Respondent has a valid relationship with Kenya Concrete, Structural, Ceramic Tiles, Wood Fly and Interior designs workers union (KCSCW&I) and as



such any remittance was in accordance with the existing agreement and the Claimant is put to strict proof of any other allegations to the contrary.

- e. In further response to paragraph 2.2, the Respondent avers that its engagement with Kenya Concrete, Structural, Ceramic Tiles, Wood Fly and Interior designs workers union (KCSCW&I) is based on a judgment of court in Cause No. 1492 of 2015- Kenya Concrete, Structural, Ceramic Tiles, Wood Fly and Interior designs workers union -vs- Landmark Holdings Ltd delivered on 31st July, 2018. The Claimant is put to strict proof of any other allegation to the contrary.
- f. The Respondent denies the allegations contained at paragraph 2.5, 2.6, 2.7 and 2.8 of the memorandum of claim in toto save to state that the Respondent has a valid relationship with Kenya Concrete, Structural, Ceramic Tiles, Wood Fly and Interior designs workers union (KCSCW&I) and the issue of any recognition agreement between the Claimant and the Respondent can only be considered once the membership issue is successfully addressed.

The Claimant is put to strict proof of any other allegations to the contrary.

4. In upshot the respondent prayed for the claimant's suit to be dismissed with costs.
5. The matter was disposed of by written submission.

Claimant's Submissions

6. The claimants representative Mr. Makale submitted among others that the prayers sought in the suit should be granted since the claimant has met three requirements of the law namely that she has recruited 73 members from the respondent's workforce of 80 employees which is about 92% and that the purported rival union members had withdrawn their membership and joined the claimant and further that the alleged rival union had recruited less than half the respondent's unionisable employees. Mr. Makale further submitted that the judgment issued by the Court would only bind the parties if the requirements of the law were still the same at the time the judgment was delivered. According to Mr. Makale, the claimant was left the relevant union in the sector after withdrawing from the rival union.
7. On the issue of the rival union, Mr. Makale submitted that the alleged recognition agreement with Kenya Concrete Tiles Wood & Interior Design Workers Union (KCWIDU) has not been filed in Court but rather the judgment delivered on 31st July, 2018.
8. On the issue of forgery of signatutres, the claimant submitted that this ought to have been reported to the police however no such report has been made. The claimant further submitted that the respondent should be restrained by the Court from victimizing its members.

Respondent's Submission

9. The respondent's Counsel Mr. Kabue on the other hand submitted that by virtue of section 2 and 54 of the *Labour Relations Act* which define recognition agreement and requirements for recognition, the claimant had not met the requirements. Counsel further relied on the case of Kenya Electrical Traders & Allied Workers Union vs. KETRACO [2021] eKLR.
10. It was Mr. Kabue's submission that no check-off forms as pleaded had been forwarded to the respondent and further that on scrutiny of the alleged forms the respondent realized that some names of its employees alleged to have joined the claimant were repeated which raised doubt over the authenticity of the forms. Further that some of the purported members were active members of KCWIDU and refuted joining the claimant. According to Counsel therefore, the claimant had not met



the threshold required by section 54 of the LRA hence the respondent had no obligation to recognize the claimant.

11. Counsel further submitted that the engagement with KCWIDU was pursuant to an order of the Court in Cause No. 1492 of 2015 between the respondent and KCWIDU where the Court ordered the respondent to deduct union dues and remit to KCWIDU and to enter into a recognition agreement. The judgment has not been set aside or reviewed.

Determination

12. The main issue in dispute in this claim is the complaint by the Union that the respondent has refused and or ignored to recognize and deduct union dues and remit the same to the claimant's designated account despite receiving check-off forms demonstrating that the claimant has recruited more than 51% of the respondent's unionisable employees. The respondent on the other hand has denied refusing to recognize the claimant. It was the respondent's defence among others that the purported check-off forms contained duplicate names and further that the persons whose names appeared on the forms denied joining the claimant union. Of more importance, was the assertion by the respondent that it was already engaged with another union being Kenya Concrete, Wood and Interior Design Workers Union (KCWIDU) and was remitting union dues to it in accordance with a court order issued in Cause No. 1492 of 2015 between the respondent and KCWIDU.
13. An employer can only recognize one union for purposes of collective bargaining on behalf of employees falling within the industry represented by the union. The claimant herein and KCWIDU have common sphere of operation hence it is not practicable to recognize and deduct union dues from its unionisable employees while still engaged with KCWIDU as per the Court order mentioned above. Unless and until the respondent lawfully disengages from KCWIDU, this court is not able to grant the orders sought by the claimant in this suit.
14. In conclusion the suit is found without merit and is hereby dismissed with no order as to costs.
15. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY OF SEPTEMBER, 2025

DELIVERED VIRTUALLY THIS 17TH DAY OF SEPTEMBER, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

