



**Kenya Union of Commercial, Food and Allied Workers v Khetia Garments Limited
(Cause E036 of 2021) [2024] KEELRC 1105 (KLR) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1105 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E036 OF 2021
MA ONYANGO, J
MAY 3, 2024**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
KHETIA GARMENTS LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the [Labour Relations Act](#) to represent employees in the commercial and food sector.
2. The Respondent is a limited liability company registered under the laws of Kenya and engages in business in Kenya.
3. By virtue of the membership clause in its registered constitution the Claimant has jurisdiction to represent the employees of the Respondent in labour matters.
4. This suit was originated by way of a Memorandum of Claim dated 18th November 2021. The issue in dispute is cited therein as “Failure to deduct and remit Union dues”. The Claimant sought for orders that: -
 - i. The Respondents to pay Union dues of the 22 employees from their own account and submit to the Claimant as follows:

12 x 400 x 53 months.....	Kshs. 254,400
10x400x9 months.....	Kshs 36,000
Total.....	Kshs 290,000
 - ii. Subsequent monthly deductions not included as at the time of filing this claim;



- iii. This Honorable Court grant any other reliefs as it may deem fit;
 - iv. Costs of the suit to be borne by the Respondent.
5. The Claimant's case is that between 5th July 2017 and 5th September 2017, it recruited 74 employees of the Respondent and vide a letter dated 19th December 2017, it forwarded to the Respondent check off forms for the Respondent to commence deduction and remittance of union dues from the employees who had signed the check off forms but the Respondent refused to comply.
 6. The Claimant avers that it recruited more of the Respondents employees into its members between 23rd and 26th January 2019 and forwarded the said check off forms to the Respondent.
 7. It is contended by the Claimant that on 27th December 2020, after failed correspondences between the parties, the Claimant reported a trade dispute to the Cabinet Secretary, Ministry of Labour and Social Protection which dispute was accepted and on 15th March 2021, a conciliator, Mr. Timothy Kipruto was appointed by the Chief industrial officer.
 8. The Claimant states that the conciliator called for a meeting on 27th April 2021 and requested parties to submit written proposals by 22nd April 2021. That on 21st June 2021, the Conciliator issued a certificate of unresolved dispute since the parties could not reach an amicable agreement on the issue in dispute. The certificate paved the way for the filing of this suit.
 9. Contemporaneously with the filing of the suit herein, the Claimant filed Notice of Motion dated 18th November 2021 seeking for orders that:
 - i. That the suit be certified as urgent and be heard on priority basis
 - ii. That service of this suit upon the Respondent be dispensed with and that the Applicant be heard *ex parte* in the first instance
 - iii. That pending the hearing and determination of this claim, the court be pleased to issue orders restraining the Respondent from victimizing, intimidating, coercing, terminating, dismissing or disciplining the Claimant's members because of their membership to the Union
 - iv. That the Respondent to pay the Union dues for the 22 employees from their own account
 - v. That the court do issue any other order it deems fit to address the cause of justice
 - vi. That costs of the Application be in the cause.
 10. This court, albeit differently constituted *vide* its ruling delivered on 29th November 2021 granted prayer (iii) in the application.
 11. Although the Respondent in its submissions has insinuated that it filed a response to the Claimant's Memorandum of Claim, I have perused the record and did not find any response. Nonetheless, I have seen the Replying Affidavit sworn by Prahlad Khetia on 20th January 2022 in opposition to the application dated 18th November 2021. The same fully addresses the issues in dispute and I will treat it as the Respondent's defence to the Claim.
 12. From the affidavit, it was the Respondent's position that in the check off forms submitted to the Respondent, the Claimant had duplicated and quo-triplicated the names of the Respondent's employees who are purported to have signed the check off forms and which had the effect of reducing the Claimant's membership from eighty-six to fourteen.



13. The Respondent further contended that 31 of the employees had already left employment of the Respondent. Further, that some of the employees in the Claimant's list were management or in positions of authority.
14. It was the Respondents case that the Claimant was duly notified of the names of the management employees and it was agreed that their names be removed from the list. That as a result, out of the forty one members of the Claimant, six were removed leaving thirty five names whose deductions were made in consultation with the employees and the Claimant.
15. The Respondent stated that by January 2021, 15 employees had withdrawn their membership from the Claimant; that in August 2021 one employee left employment and one withdrew his membership; that between September 2021 and December 2021, four employees left employment thereby leaving the Claimant's membership at 13 after one more employee withdrew her membership.
16. It is the Respondent's case that it has always remitted the Union dues as required save for the employees who are in the management. Further, that it has no authority to deduct from employees who have withdrawn membership.
17. The suit was disposed of by way of written submissions. The Claimant's submissions were filed on 23rd November 2023 while the Respondent's submissions were filed on 23rd January 2024.

Claimant's submissions

18. In its submissions the Claimant contends that the Respondent never forwarded any resignation or withdrawal letters, if there were any in its possessions. Further, that some of the purported letters annexed to the Respondent's documents do not contain the Claimant's address.

Respondent's submissions

19. The Respondent submitted that it has religiously remitted union dues to the Claimant in respect of the Claimant's members save for the employees whose names have been duplicated, those that have resigned from employment and those that have withdrawn from membership of the Claimant.
20. The Respondent further submitted that it duly complied in making remittances and that this claim is nothing but an attempt by the Claimant to unjustly enrich itself which move this court should not entertain.
21. It is the Respondent's submission that the Claimant has failed to lay any basis for granting of the orders sought. The court was urged to dismiss the suit herein with costs.

Determination

22. Upon considering the pleadings, the submissions and the authorities cited, I find that the only issue that falls for determination is whether the Respondent should be compelled to deduct and remit union dues to the Claimant from its employees who are members of the union.
23. The Claimant avers that the Respondent has refused to deduct and remit union dues from its employees who are members of the Claimant, despite the Claimant forwarding the check off forms relating to the said members. On the other hand, the Respondent avers that it has always remitted union dues for 12 of the Claimant's members in its employment. It is the Respondent's case that from the Check off forms submitted to it by the Claimant, most of the members cited therein have either left employment of the Respondent or withdrew their membership from the Claimant. The Respondent also contended that the Claimant submitted to it names that had been duplicated.



24. Section 48 of the *Labour Relations Act* provides for deduction and remittance of union dues. The Act is clear on the role of an employer once it is served with the check off forms. The section provides:

Deduction of trade union dues.

48.

- (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 Minister 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 Minister 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 Minister 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.

25. In the case at hand, the parties dispute the number of the Respondent’s employees who are in the membership of the Claimant. The Claimant annexed check off forms allegedly signed by eighty-six employees of the Respondent in its Statement of Claim. As already mentioned, the Respondent on



its part submits that only 13 of its employees are members of the Claimant and it has been deducting union dues from the 13 employees and remitting the same to the Claimant.

26. In the case of *Banking Insurance Finance Union(K) v Kenya Revenue Authority* [2018] eKLR, the Court of Appeal held that the proof of membership to a Union is submission of check-off forms duly signed by the concerned employees.
27. Although the Respondent has stated that some of the persons said to have signed the check off forms and are therefore members of the Claimant have since left employment or withdrew their membership from the Claimant, there is no proof of the said allegations. The Respondent filed 19 letters of withdrawal from union membership, 14 of the letters were from 7 employees each of whom wrote two letters of resignation on two different dates. The actual number of employees whose letters of resignation are filed is thus only 12.
28. The Respondent did not adduce any proof of the employees it avers left its employment. It is the Respondent who has custody of the information regarding the individuals it has employed and specifically the ones who are alleged to have left employment. In terms of section 112 of the *Evidence Act*, if there is a dispute on this issue, the burden of proof lies with the Respondent who has the duty to provide evidence to establish the same.
29. Consequently, I make the following orders: -
 - i. An order be and is hereby issued compelling the Respondent to henceforth deduct Union dues from the salaries of the current and future members of the Claimant as per check off forms sent to the Respondent by the Claimant and remit the same to the Claimant.
 - ii. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 3RD DAY OF MAY, 2024

MAUREEN ONYANGO

JUDGE

