



**Kenya Union of Water and Sewerage Employees v Nairobi City Water and Sewerage Company Limited (Cause E402 of 2024) [2024] KEELRC 1763 (KLR) (8 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1763 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E402 OF 2024**

**BOM MANANI, J**

**JULY 8, 2024**

**BETWEEN**

**KENYA UNION OF WATER AND SEWERAGE EMPLOYEES ..... CLAIMANT**

**AND**

**NAIROBI CITY WATER AND SEWERAGE COMPANY  
LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant is a registered Trade Union which represents employees in the water and sewerage sector in Kenya. The Respondent is an employer in the aforesaid sector.
2. According to the affidavit evidence on record, the two entered into a Recognition Agreement on 11<sup>th</sup> July 2016. The agreement entitled the Claimant to enter into collective bargaining with the Respondent in respect of its members who are in the employment of the Respondent.
3. On the basis of the aforesaid Recognition Agreement, the parties entered into a Collective Bargaining Agreement (CBA) dated 20<sup>th</sup> July 2022. From the affidavit evidence on record, the parties agreed that the CBA was to be effective as from 1<sup>st</sup> July 2021.
4. According to the affidavit evidence on record, the Collective Bargaining Agreement was registered in court on 28<sup>th</sup> July 2022. In terms of section 59 of the *Labour Relations Act*, the CBA became binding on the parties once it was registered.
5. By virtue of Part VI of the *Labour Relations Act*, once a Trade Union has concluded a CBA with an employer, the employer is obligated to deduct trade union fees from employees who are members of the Trade Union and remit the amount to the Trade Union. The employer is also required to deduct agency fees from employees who are not members of the Trade Union but who draw a benefit from the CBA. As such, the Respondent became obligated to comply with these requirements of law once it entered into the aforesaid CBA with the Claimant.



6. The affidavit evidence on record shows that on 3<sup>rd</sup> February 2023, the Cabinet Secretary for Labour and Social Services published Legal Notice No. 36 which required the Respondent to deduct and remit to the Claimant agency fees from its employees who are drawing a benefit from the CBA between the parties. In terms of section 49(3) of the *Labour Relations Act*, the Respondent was bound to start deducting and remitting agency fees to the Claimant within thirty (30) days of receipt of the aforesaid notice. The date of receipt of the notice by the Respondent is deemed to be the date of its publication.
7. The affidavit evidence on record shows that although the Respondent was notified of the Ministerial Order on 3<sup>rd</sup> February 2023, it did not commence deduction of agency fees from its employees until August 2023. According to the affidavit evidence on record, the Respondent effected deduction of this fees for the months of August, September, October and November 2023 before it stopped.
8. There is no evidence that the Respondent backdated collection of the fee to the time the CBA took effect, that is to say 1<sup>st</sup> July 2021. The only deductions and remittances established are for the months alluded to above.
9. From the affidavit evidence on record, the Respondent was required to deduct agency fees fixed at 2% of the basic salary of unionizable employees subject to a minimum of Ksh. 500.00 per month. From the evidence on record, the Respondent assessed the monthly deduction for its employees to fall between Ksh. 500.00 to Ksh. 2000.00.
10. The Claimant has now sued to enforce payment of the outstanding agency fees. From the affidavit evidence on record, the Claimant has worked out the arrears to be Ksh. 31,174,210.00 as at May 2024.
11. On institution of the instant suit, the Claimant filed an application dated 27<sup>th</sup> May 2024 for interim reliefs. In the application, the Claimant prays that the court orders the Respondent to deposit the aforesaid amount in court pending the hearing and determination of the case.
12. On 29<sup>th</sup> May 2024, the application was placed before court for issuance of the interim reliefs ex-parte. However, the court directed the Claimant to serve the Respondent for hearing of the application on 5<sup>th</sup> June 2024.
13. The court record shows that in compliance with the aforesaid directions, the Claimant served the Respondent with the pleadings on 30<sup>th</sup> May 2024. To affirm service, the Claimant has filed an affidavit of service showing that the Respondent was served with the pleadings on 30<sup>th</sup> May 2024 and acknowledged receipt by affixing its stamp on the face of the return copy.
14. When the application came up for hearing on 5<sup>th</sup> June 2024, the Respondent did not attend court. Neither had it filed a response to the motion. As such, the application remains unopposed.

### **Determination**

15. Having regard to the affidavit evidence on record, I am satisfied that the Claimant has presented a credible basis for the orders sought in the application under review.
16. Accordingly, I order the Respondent to deposit the sum of Ksh. 31,174,210.00 into the court's account pending the hearing and determination of the case.
17. The aforesaid amount to be deposited into the aforesaid account within twenty one (21) days of service of this order on the Respondent.
18. Costs of the application shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED ON THE 8<sup>TH</sup> DAY OF JULY, 2024**



**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the [ELRC Procedure Rules](#) which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

**JUDGE**

