

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E764 OF 2023**

**KENYA ENGINEERING WORKERS UNION.....CLAIMANT**

**VERSUS**

**BOCON MATERIALS SUPPLIES LIMITED.....**

**RESPONDENT**

**JUDGMENT**

1. The Claimant filed this suit through a Memorandum of Claim dated 18<sup>th</sup> September 2023 seeking, among other orders, that the Respondent be compelled to deduct and remit union dues in accordance with the provisions of Section 48(2) of the Labour Relations Act and to execute a Recognition Agreement pursuant to Section 54(1) of the Labour Relations Act.
  
2. The Claimant averred that it recruited seven of the Respondent's employees into its membership and submitted duly signed check-off forms for the deduction of trade union dues. That the Respondent declined to deduct the trade union dues and remit the same to the Claimant union.

3. The Respondent neither entered appearance nor filed a Response to the Claim.  
On 26<sup>th</sup> February 2025, the Court being satisfied with the return of service, certified the matter as undefended, and it proceeded for formal proof hearing on 23<sup>rd</sup> June 2025 in accordance with Rule 31 of the Employment and Labour Relations Court (procedure) Rules (2024).
4. At the hearing, the Claimant's Deputy General Secretary, **Mr Joabson Okaya**, testified as CW1 in support of the Claimant's case. At the outset, he adopted his witness statement and the documents filed together with the Memorandum of Claim to constitute his evidence in chief.
5. Mr. Okaya testified that the employees of the Respondent voluntarily joined the Claimant union by executing check-off forms authorising the deduction and remittance of union dues, which were thereafter forwarded to the Respondent.
6. He further stated that, in addition to the initial seven members, three more employees were recruited, raising the number to ten, which in his view, satisfied the statutory threshold of a simple majority under the law for purposes of recognition by the Respondent.
7. Mr. Okaya contended that, despite being served with the duly executed check-off forms, the Respondent had failed to give effect to the law by deducting and

remitting trade union dues and by executing a Recognition Agreement with the Claimant union.

### **Submissions**

8. The Claimant filed written submissions, which the Court has considered.

### **Analysis and Determination**

9. Upon consideration of the Memorandum of Claim, the evidence adduced, and the Claimant's submissions, the Court finds the principal issue for determination to be whether the Claimant is entitled to the reliefs sought.

### **Reliefs?**

#### **Deduction and remittance of trade union dues**

10. The Claimant's case under this head is that it recruited ten employees from the Respondent's workforce who duly executed check-off forms authorising deduction of union dues, but despite being served with the said forms, the Respondent failed to comply.

11. The Respondent having failed to file a Response and participate in these proceedings, the Claimant's evidence and assertions remain uncontroverted.

12. In support of its case, the Claimant exhibited check-off forms bearing the names of 10 employees who had acknowledged membership in the Union. By law, the check-off forms constitute sufficient authority for the deduction and remittance of union dues.

13. The right to join a trade union is guaranteed under **Articles 36 and 41 of the Constitution, Section 4 of the Labour Relations Act, and ILO Convention No. 87.**

14. **Sections 17(11) and 19(1)(f) and (g) of the Employment Act** reinforce this obligation by permitting employees to direct deductions from their wages, including union dues, which the employer must remit.

15. In light of the foregoing constitutional and statutory provisions, it follows that by executing the check-off forms, the Respondent's employees were exercising their right to join the membership of the Claimant Union and the Respondent was bound to give effect to their choice.

16. With that being said, I now turn to the issue of deduction and remittance of trade union dues. As stated herein, the Claimant seeks an order compelling the Respondent to deduct trade union dues from its employees and remit the same to the Claimant.

17. It should be appreciated that payment of trade union dues is an obligation that goes hand in hand with an employee's right to join a trade union. Accordingly, once an employee joins a trade union and executes a check-off form, **Section 48(3) of the Labour Relations Act** obligates the employer to begin deducting and remitting trade union dues within thirty days of service of the check-off form by the union.

18. In the present case, the Respondent did not rebut the Claimant's evidence that the duly signed check-off forms were served.

19. It is worth pointing out that **Section 48(3) of the Labour Relations Act** is couched in mandatory terms, leaving the employer with no discretion as to compliance.

20. This obligation is reinforced by **Section 17(11) of the Employment Act**, which prohibits an employer from limiting or directing how an employee may dispose of wages, save where authorised by law.

21. In the same vein, **Section 19(1)(f) and (g)** permits deductions authorised by law or requested in writing by the employee, provided the employer has no direct or indirect beneficial interest.

22. Trade union dues fall squarely within these provisions, thereby entitling employees to require their employer to deduct such dues and remit them as directed.

23. In the circumstances, the Respondent is under a legal duty to deduct trade union dues from the Claimant's members in its employment and remit the same to the Claimant's gazetted account.

### **Recognition Agreement**

24. The Claimant contends that by recruiting employees of the Respondent, it attained a simple majority sufficient to warrant recognition under **Section 54 of the Labour Relations Act.**

25. Section 54(1) of the Labour Relations Act obligates an employer, including one in the public sector, to recognise a trade union for purposes of collective bargaining where the union represents a simple majority of unionisable employees.

26. Recognition is therefore earned once a trade union demonstrates membership of more than half of the unionisable employees in the workforce.

27. Establishing a simple majority requires an arithmetical comparison between the total number of unionisable employees in the workforce and those recruited by the union.

28. In this case, it is notable that the Claimant did not plead or prove the total number of unionisable employees in the Respondent's workforce. Further to this, the Claimant did not adduce evidence of a formal request for recognition, which would have established the relevant base period for determining whether it had attained a simple majority at the material time. Indeed, it is not clear whether the Claimant has initiated the request for recognition at all.

29. Therefore, in the absence of the number of unionizable employees in the Respondent's workforce as well as the base period for purposes of recognition, the Court cannot determine whether the Claimant has attained the statutory simple majority to warrant recognition from the Respondent under Section 54(1) of the Labour Relations Act.

### **Order**

30. In the final analysis, the Claim succeeds in part. The Respondent is hereby directed to deduct trade union dues from all employees who are members of the

Claimant union, having duly executed check-off forms, and to remit the deductions to the Claimant's gazetted bank account.

31. There shall be no order as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>rd</sup> day of October 2025.**

.....

**STELLA RUTTO**

**JUDGE**

**In the presence of:**

For the Claimant	No appearance
For the Respondent	No appearance
Court assistant	Millicent

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that

all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**