

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT KERICHO

ELRC CAUSE NO. E002 OF 2024
(Before Hon. Lady Justice Anna Ngibuini
Mwaure)

**KENYA PLANTATION & AGRICULTURAL
WORKERS UNION.....
CLAIMANT**

VERSUS

**KABUNGERIA FARMERS CO-OP SOCIETY.....
RESPONDET**

JUDGMENT

Introduction

1. The Claimant filed a Memorandum of Claim dated 9th February 2024.

Claimant's case

2. The Claimant, a registered trade union, avers that on 19th March 2021 had successfully recruited 14 members of the Respondent employees, who represented the majority of the workforce and served the Respondent with check off forms.
3. The Claimant stated that it sent three copies of the recognition agreement along with the signed check-off forms to the Respondent, expecting the

Respondent to begin deducting and remitting union dues from the recruited members. Additionally, the Respondent was expected to process and act on the recognition agreement in accordance with legal requirements.

4. The Claimant avers that it made repeated efforts to get the Respondent to comply with statutory labour provisions, including formally reporting the dispute to the Ministry of Labour in July 2021.
5. The Claimant avers that a meeting was scheduled by the Ministry in October 2021 and, later, in February 2023, it further recruited 15 of the Respondent's employees, representing a simple majority, and submitted check-off forms to enforce legal representation rights.
6. Despite these actions, the Claimant avers that the Respondent allegedly continued to violate the employees' constitutional and statutory rights.
7. The Claimant prays for:
 1. *This Honourable Court to prohibit and/or restrain the Respondent from harassing, threatening to dismiss and/or causing undue influence over its employees who are*

members of the Claimant's union pending the hearing and determination of this cause.

2. This Honourable Court to compel the Respondent to deduct and remit union dues of the Claimant's union members from its farm.

3. This Honourable Court to compel the Respondent to sign the Recognition agreement served upon the Respondent by the Claimant's Union, allow Claimant access to its premises for purposes of holding a general meeting and further compel the Respondent to negotiate a Collective Bargaining Agreement with the Claimant union.

4. Costs of the suit be borne by the Respondent.

5. Any other relief that this Honourable Court may deem fit and just to grant.

8. The Respondent, on the other hand, was served with the pleadings and did not put in a response to that effect as per the affidavit of service filed before this Honourable Court. The affidavit of service was filed on 10th March 2025 and dated 26th April 2024.

9. Eventually, the suit proceeded as formal proof, and the court directed that the Claimant file its written submissions.

Claimant's submissions

10. The Claimant submitted that under **Articles 36 and 41 of the Constitution**, workers have the right to fair labour practices and freedom of association, including joining and participating in trade union activities. Citing **section 48 of the Labour Relations Act**, the Claimant emphasised that once check-off forms are served, employers are legally obligated to deduct union dues from employees' wages within thirty days. The Claimant relied on the case of **Kenya Union of Hair and Beauty Salon Workers V Style Industries Limited & Another [2017] KEHC 5396 (KLR)**, where the court affirmed that employers must deduct union dues upon receipt of signed check-off forms. The Claimant maintained that such forms were duly submitted in 2021 following successful recruitment, and further recruitment efforts have since solidified the union's recognition threshold at the Respondent's farm. Therefore, the Respondent's failure to remit dues undermines the employees' constitutional rights and the union's lawful entitlement.

11. The Claimant relied on **Section 54 of the Labour Relations Act**, which provides that an employer, or group of employers, including those in the public sector, must recognize a trade union if it represents a simple majority of unionisable employees. Once this threshold is met, a written recognition agreement must be concluded between the parties. The Minister may publish a model recognition agreement to guide this process. Employers or their associations can apply to the Board to revoke such agreements. If disputes arise over recognition or cancellation, they must first undergo conciliation; if unresolved, they can be escalated to the Industrial Court under urgency. In resolving such disputes, the court must consider the employer's sector and any published model agreements.

12. In **Kenya National Union of Nurses V Friends Lugulu Mission Hospital [2021] KEELRC 2325 (KLR)**, Justice Abuodha affirmed that under **Section 54(1) of the Labour Relations Act**, an employer must recognize a trade union for collective bargaining if it represents a simple majority of unionisable employees. The Respondent acknowledged receiving check-off forms and

deducting union dues for confirmed union members. The Claimant argued that it had recruited over 29 employees, exceeding the statutory threshold, which the Respondent did not substantially dispute. Consequently, the Claimant asserted that recognition was mandatory, paving the way for negotiating a Collective Bargaining Agreement (CBA) under **section 57 of the Labour Relations Act**.

13. The Claimant urged this Honourable Court to allow the claim as prayed with costs.

Analysis and determination

14. The court has considered the pleadings on record; the issue for determination is whether the claim is merited.

15. **Section 48 of the Labour Relations Act** provides as follows:

“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.

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.

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. The Minister may vary an order issued under this section on application by the trade union.

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.

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.

A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.

An employer shall forward a copy of any notice of resignation he receives to the trade union.”

16. ***Section 54 of the Labour Relations Act***

provides as follows:

An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are

members of the employers' organisation within a sector.

An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.

The Minister may, after consultation with the Board, publish a model recognition agreement.

An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.

If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.

If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.

When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister.

17. In ***Kenya National Union of Nurses V Nyabondo Mission Hospital [2023] KEELRC 1955 (KLR)***, the court held that the Claimant had met the legal threshold of recognition, and the Respondent is bound to recognize the Claimant union. It is evident to this Court that the Claimant has met the threshold for the deduction of Union dues by the Respondent. The Respondent is by law duty bound to deduct Union dues and remit the same to the Claimant.
18. In this instant case, the Claimant had recruited the simple majority of unionisable members and sent the check-off forms as required, which the Respondent failed to respond to. This is affirmed by

exhibits E01 annexed to the Memorandum of claim. These are check-off forms which were sent to the Respondents in March 2021. The Claimant invited the Respondent for a meeting by their letter dated 7th July 2021 but it did not respond. The Claimant's case is therefore not controverted.

19. In the view of the foregoing, the court finds that the claim dated 9th February 2024 is merited as there is even no opposition by the Respondent. Judgment is entered in favour of the Claimant.

20. The following orders are granted:

1. This Honourable Court to prohibit and/or restrain the Respondent from harassing, threatening to dismiss and/or causing undue influence over its employees who are members of the Claimant's union.

2. This Honourable Court to compel the Respondent to deduct and remit union dues of the Claimant's union members from its farm.

3. This Honourable Court to compel the Respondent to sign the Recognition agreement served upon the Respondent by the Claimant's Union, and to allow the Claimant access to its premises for purposes of holding a general meeting and further to compel the Respondent to negotiate a Collective Bargaining Agreement with the Claimant union.

4. The Claimant is awarded costs of this suit.

Orders accordingly.

Dated, Signed and Delivered virtually at Nakuru this 23rd Day of October, 2025.

**ANNA NGIBUINI MWAURE
JUDGE**

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 15th March 2020 and subsequent directions of

21st 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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE