



**Kenya Union of Special and Professional Guards (KUSPROG) v Garda World Security (K) Limited (Cause E724 of 2025) [2025] KEELRC 2842 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2842 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E724 OF 2025  
ON MAKAU, J  
OCTOBER 23, 2025**

**BETWEEN**  
**KENYA UNION OF SPECIAL AND PROFESSIONAL GUARDS  
(KUSPROG) ..... CLAIMANT**  
**AND**  
**GARDA WORLD SECURITY (K) LIMITED ..... RESPONDENT**

**RULING**

**Introduction**

1. This Ruling relates to the Claimant’s Notice of Motion dated 25<sup>th</sup> July 2025 seeking the following orders:-
  - a. This Application be certified as extremely urgent, service be dispensed with, and the same be heard ex-parte in the first instance.
  - b. An order of Temporary Injunction be issued, against the Respondent, her agents, servants, and/or representatives, prohibiting them from interfering, victimizing, intimidating, harassing, coercing and threatening unionisable employees who are members of the Applicant Union.
  - c. Pending the hearing and determination of this instant Application and the main suit, an Order be issued directing the Respondent to immediately implement all Form Ss (Check-Offs) already forwarded by the union and which are due, and in line with the provisions of section 48 of *Labour Relations Act*.
  - d. Pending the hearing and determination of the Application, the main suit, and the reported trade dispute pending conciliation before CS Labour and Social Protection, and order



be issued directing the Respondent to implement Check-Offs regularly submitted by the Applicant union in line with the provisions of section 48 of [Labour Relations Act](#).

- e. Any other order the Honourable Court may deem fit to grant for the ends of justice to materialize.
  - f. The costs and incidentals of this Application be provided for.
2. The motion was supported by the Affidavits sworn on 25<sup>th</sup> July 2025 and 19<sup>th</sup> September 2025, by the Claimant's Secretary General Secretary, one Samson Omechi Ong'era another one by Odhiambo Antoney Saoke. It was opposed by the Respondent vide a Replying Affidavit sworn on 9<sup>th</sup> September 2025 by Respondent's Human Resource Manager one Roselyn Kweyu.

### **Facts of the case.**

3. The Claimants is a registered trade union and brings this suit on behalf of its members who are employees of the Respondent. Between November 2024 and July 2025, the Claimant recruited members from the Respondent's employees who signed check-off forms authorizing the Respondent to deduct and remit union dues (subscriptions) amounting to Kshs. 250/- from their respective monthly salaries.
4. The Claimant then forwarded the duly signed check-off forms to the Respondent on diverse dates to effect the deduction and remittance of Kshs. 250 from the salary of each employee who had signed the forms.
5. The Claimant further served the Respondent with an order published by the Cabinet Secretary for Labour which took effect on 17<sup>th</sup> January 2025. The order directed the employers of the Claimant's members to deduct union dues from the member's monthly wages and remit to Account No. 1002121000018 at Consolidated Bank of Kenya Ltd, Harambee Avenue Branch, Nairobi within 10 days of the date of deduction.
6. The Claimant alleged that it recruited a total of 4408 members from the Respondent's workforce and averred that as at the time of filing the suit the Respondent ought to have deducted and remitted Kshs, 5,468,000 from December 2024. However, the Claimant averred that the Respondent failed to comply with the employees instruction in the said Check –Off forms and the order by the Labour Cabinet Secretary forcing it to lodge a trade dispute under section 62 of the [Labour Relations Act](#) on 18<sup>th</sup> July 2025.
7. The Claimant averred that the orders sought are necessary to stop the Respondent's violation of its members fundamental rights and freedoms to representation as enshrined in [the constitution](#) and international law. It averred that it had presented a prima facie case with probability of success as the employees have duly signed check-off forms authorizing the deduction but the Respondent has embarked on interfering with the said recruitment by asking the employees to confirm in writing whether they had signed the check-off forms.
8. The Claimants further averred that the orders sought are justified because the recruitment exercise was in line with the Article 36 and 41 of [the Constitution](#), and Section 48 of the [Labour Relations Act](#), but the Respondent is intimidating and harassing the employees.
9. The Respondent admitted that the Claimant conducted the said membership recruitment exercise between November 2024 and July 2025 and forwarded various check-off form (Form S) signed by various employees, authorizing deduction of union dues from their salary and remittance to the Claimant. It further confirmed that it notified the employees of the intention to deduct the union dues



for onward transmission to the Claimant and a number of them wrote to the company indicating that they never signed any document to authorize deduction of union dues from their salary for remittance to the Claimant. A total of 248 employees wrote to disown the signatures on the said check-off forms

10. The Respondent further averred that the order of temporary injunction is not warranted as the Claimant has not met the threshold of prima facie case. That it has not demonstrated how the employer has threatened, victimized, intimidated or coerced the unionisable employees. It further averred that suit was prematurely filed before conciliation was done on the issues raised. It also argued that the prayer to compel the employer to deduct union dues from its employees is final relief which cannot be granted at an interlocutory stage noting that there are complaints of forgery of signatures.
11. The Respondent further averred that it notified the Claimants of the objection by some of the alleged members and clarified that it only notified the employees of the impending deduction of union dues and never called them for interrogation on their membership. However, it contended that the court should interrogate the check-off forms submitted by the Claimants at a full hearing prior to granting any orders.
12. It further averred that it has an existing Recognition Agreement and a Collective Bargaining Agreement (CBA) with the Kenya National Private and that Kshs. 150 of the union dues ought to go to COTU. It maintained that the suit was prematurely filed and the Motion lacks merits.
13. The Motions was disposed of by written submissions before Ndolo Judge who has since been transferred to another station. However, with the consent of the parties, I now write this ruling. Having considered the Motion, Affidavits and submissions, the following issues fell for determination:-
  - a. Whether the suit is prematurely before the court.
  - b. Whether the orders sought should be granted.

#### **Whether the suit is premature.**

14. The Respondents contended that the suit and the Motion have been prematurely brought without following the prescribed statutory procedure. No statutory provisions were cited to fortify the said contention but the Respondent contended that the prayer sought are not contemplated under Rule 54 of the Employment and Labour Relations Court Procedure Rules, 2024. The said Rule provides that:

“A party who has reported a trade dispute for conciliation

Under the *Labour Relations Act* may file a notice of motion in a suit seeking an injunction, conservatory or restraining order or any other order to maintain status quo pending the conclusion of the conciliation”

15. In view of the foregoing, I find that the suit and the motion are in accordance with Rule 54 above. The essence of the Rule is to protect Alternative Dispute Resolution proceedings from being rendered nugatory by preserving the status quo and the substratum of the proceeding. There is evidence that the Claimant reported a trade dispute on 18<sup>th</sup> July 2025 and thereafter brought this suit on 25<sup>th</sup> July 2025.

#### **Reliefs sought**

16. In the instant case the Claimant seeks temporary injunction against the Respondent and/or its representatives from interfering, victimizing, intimidating, harassing, coercing and threatening unionisable employees who are members of the union; and also an order compelling the Respondent



to implement the check-off forms (Forms S) pending the conciliation of the trade dispute reported to the Cabinet Secretary.

17. As observed above, the essence of Rule 54 is to protect, a party who has initiated conciliation proceedings under Section 62 of the *Labour Relations Act*, from infringement of a right or for preservation of status quo pending the determination of the conciliation process. By doing the said process is not rendered nugatory. Therefore a party is not allowed to seek final relief under Rule 54 above.
18. It follows that, where the order sought is final in nature, a court of law should eschew from granting the same in order to ensure the right to fair hearing is protected. In the case of *Ngurumani Limited v. Jan Bonde Nielsen & 2 others* [2014]eKLR the Court of Appeal held that:

“...it would be both premature and prejudicial to the rights of the parties to make any conclusion pronouncements on matters either of fact or law while the suit, where such merits will be decided is still pending”.
19. The order sought to compel the Respondent to commence deductions falls within the province of final orders. If the order is granted as prayed, the main issue pending conciliation before the Labour Cabinet Secretary, namely, failure to implement check-offs (Forms S) in line with section 48 of the *Labour Relations Act* will be rendered moot. Consequently, it is only fair to let the alternative statutory mechanism commenced by the Claimant vide the referral letter dated 23<sup>rd</sup> July 2025 to be exhausted.
20. However, as regards the prayer for interlocutory injunction the court is persuaded that the Motion raises legitimate concerns about potential interference with the employees’ right to join and participate in a trade union contrary to Article 41(2) (c) of *the Constitution*.
21. Allowing an employer, the discretion to investigate and even to unilaterally extend the period for complying with the Forms S beyond the statutory period of thirty 30 days would be interference with the right to association, and joining and participating in a trade union of choice contrary to Article 36 and 41 of *the Constitution*.
22. Having considered the material presented, I must say that I am satisfied that the Claimant has demonstrated a prima facie case with probability of success during the conciliation process. It has demonstrate that it recruited members in excess 3500 from the Respondent’s staff, out of which the Respondent contended that 248 disputed their membership and wrote letters to disown the signatures in the Form S or to withdraw their membership. The dispute about deduction and remittance of union dues is now before the Labour Cabinet Secretary and therefore it is not open for the Respondent to engage the employees on the authenticity of the Forms S as that is likely to manipulate or interfere with their right to union membership.
23. In view of the foregoing, it is only fair that there be a temporary injunction to restrain the Respondent from interfering with the Claimant’s members in the company’s workforce pending the conciliation process. If the order is withheld, the status quo in the membership may be destroyed and occasion irreparable harm to the Claimant because the lost membership cannot be remedied by any damages, just like the right of the employees to representation.

## Conclusion

24. I have found that the order to compel the Respondent to commence deduction of union dues pending the conciliation process is premature and cannot be granted. However, I have found that a temporary injunction is warranted and is hereby given, restraining the Respondents, its agents and/



or representatives from intimidating, coercing, or victimizing employees or interfering with their membership in the Claimant union, pending the conciliation process.

25. Due to the nature of the case, I direct that the conciliation process be concluded as soon as possible and a Report of the conciliation filed in court. Cost of the Motion in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

**ONESMUS MAKAU**

**JUDGE**

Appearance:

Ongera for the Claimant

Anzala for the Respondent

