



Union of Kenya Civil Servants v Kenya Bureau of Standards (Petition E114 of 2025) [2025] KEELRC 2921 (KLR) (27 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2921 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E114 OF 2025
HS WASILWA, J
OCTOBER 27, 2025**

BETWEEN

UNION OF KENYA CIVIL SERVANTS PETITIONER

AND

KENYA BUREAU OF STANDARDS RESPONDENT

RULING

1. The Petitioner/Applicant filed a Notice of Motion dated 10th June 2025 seeking orders that: -
 1. spent
 2. this Honourable Court be pleased to issue an order directing the respondent to immediately effect statutory union deductions of Kshs. 500/-per month from the salaries of the Petitioner's 179 recruited and eligible members at the Kenya Bureau of standard s, pending the hearing and determination of this application and/ or the petition
 3. pending the hearing and determination of this application, this Honourable Court be pleased to issue mandatory order compelling the Respondent to fully implement Category 7A as approved by the National Standards Council with effect from May 2023, for all eligible staff members of the applicant.
 4. this Honourable Court be pleased to issue an order compelling the Respondent to return and reinstate all shop steward and union representatives who were arbitrarily transferred from the head office following Their union participation and organizing disputes and activities.
 5. this Honourable Court be pleased to issue an order directing the respondent to pay the applicable and lawful transfer allowances to the union-member drivers transferred from the head office in the same manner and amount paid to drivers transferred to the head office.



6. this Honourable Court be pleased to issue an order compelling the Respondent to allow the Petitioner, as a duly recognized union, to access the Respondent's Head Office premises to address and engage its members, subject to reasonable workplace protocols.
7. this Honourable Court do issue a declaration that the Respondent's actions, including but not limited to refusal to deduct union dues, failure to implement Category 7A, arbitrary transfers of shop stewards, discriminatory payments of transfer allowances, and denial of access to members, are unlawful, unreasonable, discriminatory and in violation of the law.
8. the cost of this application be provided for.

Petitioner/Applicant's Case

2. The Petitioner/Applicant avers that it is a registered trade union duly recognized under the [Labour Relations Act](#), 2007 and has recruited approximately 179 members among employees of Kenya Bureau of Standards, who have duly executed check-off forms authorizing deduction of union dues of Kshs. 500 per month.
3. The Petitioner/Applicant avers that the Respondent has unreasonably, unlawfully and unfairly failed and/ or refused to commence deductions or to remit such dues to the Petitioner.
4. Additionally, the Respondent has arbitrarily and vindictively transferred elected shop stewards from the head office to remote stations without justification, in what amounts to punishment for union activity.
5. It is the Petitioner/Applicant's case that Respondent has frustrated attempts of conciliation by repeatedly failing to appear at the conciliation meetings convened by the Ministry of Labour, leading to certificate of unresolved disputes dated 24th February, 2025.
6. The Petitioner/Applicant avers that the Respondent has failed, refused and / or neglected to implement Category 7A as approved by the National Standards Council in May 2023, thereby denying employees their rightful remuneration and frustrating industrial harmony. Additionally, it has unlawfully denied some drivers transfer allowances while selectively paying others, thus violating the principles of equality and fairness in employment.
7. The Petitioner/Applicant avers that the Respondent continues to deny the petitioner access to its members at the head office, thereby infringing on the unions right to associate and organize. These actions amount to unfair, discriminatory and unreasonable administrative actions.
8. It is the Petitioner/Applicant's case that the Respondent's conduct threatens industrial peace, violates the rights of workers to fair labour practices and undermines the rule of law and constitutionalism in the workplace. Thus, the application is made in good faith and is necessitated by the Respondent's blatant disregard of constitutional, statutory and administrative obligations.
9. The Petitioner/Applicant avers that the balance of convenience tilts in favour of granting the orders sought and the petitioner and its members stand to suffer irreparable harm, economic loss and continued violation of their rights if the orders sought are not granted.

Respondent's Case

10. In response to the Application, the Respondent a replying affidavit dated 23rd July 2025 sworn by Bashir Ahmed, its Chief Manager, Human Resource Department.



11. The Respondent avers that it has not entered into any Recognition Agreement with the Petitioner/Applicant as required by Section 54 of the [Labour Relations Act](#), 2007 nor has the Petitioner/Applicant shared a draft of the Recognition Agreement. Without a recognition agreement, the Respondent is not legally obligated to engage with the union for collective bargaining purposes, and the union may not be able to represent its members' interests effectively thereby rendering it impossible for the Respondent to effect the statutory union deductions.
12. The Respondent avers the Petitioner/Applicant had initially through a letter dated 6th May 2024 requested for a deduction of Kshs.500 for 110 employees who were/are recruited union members. Therefore, the alleged number of 179 employees is unjustified and not backed by evidence.
13. The Respondent avers that vide a letter dated 12th March 2025, it explained that an internal hitch caused its non-attendance to the two conciliation meetings leading to the issuance of the Certificate of Unresolved Dispute. It further formally requested for scheduling of another meeting before the Conciliator which demonstrates the Respondent's intention and willingness to resolve the dispute amicably.
14. The Respondent avers that Section 2.35.1 of KEBS Human Resource Policy states that: 'KEGS recognizes that in order to meet its operational requirements, it may be necessary to transfer/post staff members from one department to another or region within KEBS. This policy has therefore been developed in support of the provisions for staff to allow for an employee to be posted to any duty station.'
15. It contends that the transfer of David Kisang, Nicholas Mutai and Leonard Kibet who happen to be the alleged shop stewards and representatives of the Petitioner were not in any way connected to their involvement in union activities but was rather in accordance to Respondent's Human Resource Policy.
16. The Respondent avers that it duly paid David Kisang, Nicholas Mutai and Leonard Kibet Transport Allowance which was equivalent to their transfer allowances in accordance with Section 4.7.1 of KEBS Human Resource Policy which states that: 'When an employee is transferred from one station to another s/he will be eligible for payment of transfer allowance amounting to one (1) month's basic salary immediately s/he is released to the new station provided the new station is more than 40 km from the old station.'
17. It is the Respondent's case that it recognizes the right of duly registered trade unions to operate within its establishment. However, the exercise of such rights must be undertaken strictly in compliance with the applicable legal framework, including the Employment and [Labour Relations Act](#) and all other relevant statutes and regulations, in order to ensure orderly and lawful engagement between the employer and the union.

Petitioner/Applicant's Submissions

18. The Applicant submitted on three issues: whether the Respondent's refusal to deduct and remit union dues and recognize the Petitioner violates Article 41 of [the Constitution](#) and Section 48 of the [Labour Relations Act](#); whether the Respondent's actions of arbitrary transfer, discrimination and denial of access of shop stewards constitutes victimization, unfair labour practices and breach of the Petitioner's and its members' constitutional rights; and whether the Applicant has met the threshold for the grant of conservatory and mandatory interim orders sought.
19. On the first issue, the Applicant submitted that the check-off system is the legal mechanism through which union dues are collected from members' salaries and remitted to their union by the employer. This mechanism is statutorily recognized and constitutionally grounded. In the instant case, the



unions submitted duly signed check-off forms for 179 employees of the Respondent, each voluntarily consenting to a monthly deduction of Kshs. 500 from their wages as union dues in accordance with the *Labour Relations Act*.

20. The Applicant submitted that the Respondent, a public body subject to *the Constitution* and national labour laws, has refused, failed, and neglected to effect the deductions or remit any dues, despite being under a legal duty to do so. This refusal is not only unlawful but constitutes a direct violation of Article 41 of *the Constitution*, the *Labour Relations Act*, and established principles of labour jurisprudence.
21. It is the Applicant's submission that by refusing to honor voluntary check-off instructions duly executed by its employees, the Respondent is in violation of their right to associate and to be represented enshrined under Article 24 of *the Constitution*.
22. The Applicant submitted that the Respondent's continued refusal to deduct union dues, despite the employees' clear expression of consent, amounts to such unlawful interference which contravenes ILO Convention No. 98 on the Right to Organise and Collective Bargaining, that provides those public authorities shall refrain from any interference which would restrict or impair the lawful exercise of the right to organize.
23. The Applicant placed reliance in wherein the court held: "*The Constitution* and the *Labour Relations Act* acknowledge and guarantee freedom of association, which includes the right of an employee to belong, or not belong to a trade union. This is also the position under ILO Convention No. 87 although I note that Kenya is yet to ratify the same.
24. The Applicant placed reliance in Kenya Concrete, Structural, Ceramic Tiles, Wood Plys and Interior Design Workers Union v Cibien Engineering Construction Company Limited [2024] KEELRC 215 (KLR), wherein the court held:

"*The Constitution* and the *Labour Relations Act* acknowledge and guarantee freedom of association, which includes the right of an employee to belong, or not belong to a trade union. This is also the position under ILO Convention No. 87 although I note that Kenya is yet to ratify the same. In this regard, the right to form, join or participate in the activities and programmes of a trade union is guaranteed under Article 41(2) (c) of *the Constitution*. Further, Article 36 (1) of *the Constitution* guarantees freedom of association in the following manner.....section 4 (1) of the *Labour Relations Act* is one of the ways through which the above Constitutional provisions have been given effect. Flowing from the above constitutional and statutory provisions, it is clear that the right of the Respondent's employees to join the Claimant's membership is guaranteed and is inalienable.

From the record, there is no evidence exhibited contradicting the willingness of the Respondent's employees to join the Claimant Union. That said, payment of union dues by members, is an obligation that goes hand in hand with the right to join a trade union. Specifically, section 48(2) and (3) of the *Labour Relations Act*."

25. The Applicant submitted that acting in utmost good faith, it reported the matter to the Ministry of Labour for conciliation under Section 62 of the *Labour Relations Act*. Despite being invited to several meetings, the Respondent deliberately failed to attend or engage in the conciliation process and as a result, a Certificate of Unresolved Dispute was issued on 24th February 2025 in accordance with Section 69(a) of the *Labour Relations Act*. This certificate effectively confirms that the matter is ripe for judicial adjudication and that the Petitioner has complied with all pre-litigation statutory dispute resolution mechanisms.



26. It is the Applicant's submission that the Respondent's conduct violated its employees freedom of association and trade union rights provided under Article 41 and 36 of *the Constitution*; breach of statutory obligations under Section 48 of the *Labour Relations Act*; an affront to the rule of law and constitutionalism as envisioned under Articles 2 and 10; and a form of economic sabotage intended to frustrate the Petitioner's legitimate trade union functions.
27. On the second issue, the Applicant submitted that the Respondent's abrupt and arbitrary transfer of three elected union representatives, David Kisang, Nicholas Mutai, and Leonard Kibet from the Head Office to remote locations was not a routine administrative move, but a deliberate and retaliatory action aimed at weakening the Petitioner's presence at the workplace, suppressing union activity, and punishing the said individuals for engaging in protected union activity.
28. The Applicant submitted that the transfers were effected without consultation, justification, or procedural fairness, in violation of the rights of the individual employees and the broader constitutional and statutory protections afforded to union officials.
29. The Applicant cited Kenya Plantation Agricultural Workers Union v Lauren International Flowers Ltd [2023] KEELRC 90 (KLR) wherein the court held:
- “Article 41 of *the Constitution*, guarantees the right to join a union and participate in the activities of such union. Consequently, victimization of an employee on account of their union membership is a direct violation and goes to the root of article 41 and the constitutional right to associate. This is an inviolable right that cannot be taken away. I must emphasize that victimization and harassment of employees on account of their membership to a union, is a grave matter and is to be frowned upon and should not be left to stand as it would result in an irreparable injury.”
30. It is the Applicant's submission that the Respondent has not presented any objective, transparent or operational justification for the transfers. No record of administrative need, staff rotation policy, or performance-related criteria has been disclosed. The timing, targeting, and abrupt nature of the transfers strongly suggest that they were retaliatory in nature and specifically designed to: disrupt the Petitioner's unionization efforts; intimidate other employees from joining or supporting the union; and render the Petitioner ineffective in discharging its lawful role within the Respondent's premises.
31. On the third issue, the Applicant cited Kenya Plantation Agricultural Workers Union v Lauren International Flowers Ltd [2023] KEELRC 90 (KLR) wherein the court held:
- “Issuance of injunctive orders at an interlocutory stage is guided by the principles set out in the celebrated case of *Giella v Cassman Brown* [1973] EA 358 at page 360 where Spry VP held that:.... First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (*E.A. Industries v. Trufoods*, [1972] E.A. 420.)”
32. The Applicant submitted that prima facie case has been defined in *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR as:
- “A prima facie case in a civil application includes but is not confined to a "genuine and arguable case." It is a case which, on the material presented to the court, a tribunal properly



directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."

33. It is the Applicant's submission that it has demonstrated a prima facie case on the uncontested and documented facts that: 179 employees voluntarily signed check-off forms authorizing deduction of union dues; the Petitioner submitted the forms in accordance with Section 48(2) and (3) of the Labour Relations Act; the Respondent has refused and/or failed to effect the deductions without lawful justification; shop stewards have been transferred arbitrarily and without consultation; Category 7A, though approved by the National Standards Council, has not been implemented; and access to union members has been persistently denied, and transfer allowances selectively paid.
34. The Applicant submitted that the Respondent's actions violated Articles 36, 41, 47, and 27 of the Constitution, and statutory provisions under Sections 46 and 54 of the Employment Act; Sections 48 and 56 of the Labour Relations Act and Section 4 and 5 of the Fair Administrative Action Act. The Respondent's failure to act on statutory and constitutional obligations forms the basis of a strong prima facie case requiring urgent judicial intervention.
35. On irreparable harm, the Applicant submitted that unless the orders are granted: its organizational presence will be crippled by denial of union dues and removal of union leaders; the discriminatory transfer allowance practice will perpetuate inequality and discontent; and the denial of access will stifle union operations, leading to a chilling effect on employee freedoms.
36. It is the Applicant's submission that where there is continuing violation of constitutional rights, the courts must not wait for irreparable injury to crystalize but must act to prevent further injustice. Irreparable harm, as explained in *Giella v Cassman Brown*, does not mean injury beyond monetary compensation, but injury to rights, dignity, and public interest that cannot be quantified in shillings and cents.
37. On balance of convenience, the Applicant submitted that the public interest lies in ensuring constitutional fidelity by a government agency, conservatory and mandatory reliefs will serve to protect union rights, encourage industrial peace, and restore fairness and no prejudice will be suffered by the Respondent, as it is merely being directed to comply with pre-existing statutory duties.
38. It is the Applicant's submission that a mandatory injunction can be granted at an interlocutory stage where the Applicant's case is unusually strong and clear. Where the refusal to act is itself an ongoing illegality, a mandatory order to perform a statutory duty is justified even at an interim stage.

Respondent's Submissions

39. The Respondent submitted on three issues: whether the Petitioner has met the threshold for the grant of conservatory and mandatory orders; whether the ex parte orders should be set aside; and whether the Respondent's actions were lawful and consistent with the Labour Relations Act and internal policy.
40. On the first issue, the Respondent submitted that the principles governing the grant of conservatory orders were laid out in *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] eKLR, where the court held that the applicant must demonstrate: A prima facie case with a likelihood of success; That the applicant will suffer irreparable harm; and that the public interest favors the grant of the orders.
41. The Respondent submitted that the Petitioner/Applicant has not demonstrated irreparable harm. The alleged financial loss and administrative grievances are compensable through damages or internal remedies.



42. It is the Respondent's submission that the court emphasized that conservatory orders are not meant to grant final reliefs or determine substantive rights prematurely as held in *Judicial Service Commission v Speaker of the National Assembly & Another* [2013] eKLR. The orders sought in the application, such as compelling deductions, reinstating shop stewards, and implementing salary upgrades are final in nature and should only be granted after a full hearing.
43. The Respondent submitted that the Petitioner's reliance on Section 48 of the *Labour Relations Act* is misplaced as the parties have not entered into a recognition agreement, which is a prerequisite under Section 54 of the Act for collective engagement. It cited *Kenya Union of Commercial, Food and Allied Workers v Nestle Kenya Limited* [2014] eKLR, wherein the court held that without a recognition agreement, an employer is not obligated to deduct union dues or engage in collective bargaining.
44. On the second issue, the Respondent submitted that ex parte orders obtained through non-disclosure or misrepresentation must be set aside as held in *Republic v Chief Registrar of the Judiciary & 7 Others Ex Parte Gladys Boss Shollei* [2014] eKLR. In the instant application, the ex parte orders were obtained without full disclosure of material facts, including: the absence of a recognition agreement; the Respondent's willingness to engage in conciliation; and the internal policy governing staff transfers and allowance.
45. The Respondent submitted that it has demonstrated its intent to resolve the dispute amicably and should be allowed to participate in conciliation as per Section 62 of the *Labour Relations Act*.
46. On the third issue, the Respondent submitted that its internal transfer of shop stewards was conducted in line with Section 2.35.1 of its Human Resource Policy and was not retaliatory. Additionally, they were paid transfer allowances in accordance with Section 4.7.1 of the KEBS HR Policy, thus, the Petitioner's claim of discrimination are unfounded.
47. It is the Respondent's submission that the refusal to implement Category 7A salary upgrades is subject to budgetary and administrative considerations and cannot be enforced through interim orders. It cited *Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Nairobi Institute of Business Studies* [2022] eKLR, the court held that administrative decisions affecting salaries must be subjected to internal and statutory processes before judicial intervention.
48. The Respondent submitted that section 48 of the *Labour Relations Act* provides that a recognition agreement required for union engagement. Additionally, the Act provides that Deductions only commence upon ministerial order and recognition.
49. On constitutional avoidance, the Respondent submitted that application is not meritorious and is anchored by facts that do not meet the threshold of a petition. It cited several case law including, *KKB v SCM & 5 others (Constitutional Petition 014 of 2020)* [2022] KEHC 289 (KLR) (22 April 2022) (Ruling), in which Mativo, J. (as he then was) had this to say about the doctrine:

“In summation, the doctrines of ripeness and constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. In other words, a constitutional issue is not ripe for determination until the determination of the constitutional issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance and ripeness avert the determination of the constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant's cause.”

50. I have considered all the averments and submissions of the parties herein. The respondents have not denied receiving a request to deduct and remit dues as prayed by the applicants. The only contention



by the respondent is that they have no recognition agreement with the union hence cannot effectively collectively bargain. Deductions of union dues is however not based on a recognition agreement but on union membership. The prayer to deduct and remit union dues is therefore allowed accordingly.

51. The other prayers sought by the applicant are substantive prayers which this court will resolve in the main petition and I decline to grant them at this point.
52. The costs of the applicant shall be in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

