

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E903 OF 2024

PETER IPAPO.....CLAIMANT

VERSUS

KENYA AIRPORTS AUTHORITY.....RESPONDENT

JUDGMENT

1. The Claimant avers that on or about 13th September 1982, he was employed by the Respondent as an apprentice electrician, a position he held until his retirement on 15th March 2023. He avers that throughout his tenure, he served the Respondent faithfully, diligently, and with utmost integrity.

2. The Claimant further contends that upon his retirement, the Respondent failed, neglected, and/or refused to refund him the sum of Kshs 154,097.76, being wrongful deductions made as trade union dues to the Kenya Aviation Workers Union (KAWU). On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondent:

- a) *A declaration that the Respondent's withholding of the Claimant's terminal dues is unlawful and unfair.*
 - b) *An order for the payment of all lawful terminal dues set out at paragraph 8 above.*
 - c) *An Order directed to the Respondent to pay the damages for unlawful and discriminatory treatment.*
 - d) *Costs of this suit with interest thereon.*
3. The Respondent opposed the claim through a Response dated 17th March 2025, contending that the Claimant was, at all material times, subject to the deduction of union dues and/or agency fees in favour of the KAWU until his retirement on 15th March 2023, at which time he was in Job Grade S5.
 4. The Respondent maintains that the deduction and remittance of trade union dues and/or agency fees from the Claimant's salary to KAWU was carried out in strict compliance with legal directives issued in ELRC Cause No. 2204 of 2015 and Gazette Notice No. 1191 of 19th February 2014.
 5. The Respondent further contends that the claim is time-barred and offends the mandatory provisions of Section 90 of the Employment Act, thereby depriving

this Court of jurisdiction to hear and determine the matter. Accordingly, the Respondent prays that the claim be dismissed with costs.

6. In addition, the Respondent filed a Notice of Preliminary Objection dated 17th March 2025, premised on the ground that the claim is time-barred and contravenes the mandatory provisions of Section 90 of the Employment Act, 2007, and Section 4(1) of the Limitation of Actions Act.
7. On 2nd May 2025, the Court, having observed that there were contested factual issues, directed that the Preliminary Objection be heard and determined alongside the main claim.
8. The matter subsequently proceeded for hearing on 10th July 2025, during which both parties adduced oral evidence in support of their respective cases.

Claimant's case

9. The Claimant testified in support of his case as CW1. At the outset, he adopted his witness statement and the documents filed together with the Statement of Claim to constitute his evidence in chief.
10. CW1 testified that he was first employed by the Ministry of Transport and Communication on 13th September 1982. Subsequently, on 1st July 1996, he was

absorbed into the Respondent's service as an electrician, where he rose through the ranks to the position of Technician–Electrical, Grade S5, a position he held until his retirement.

11. He further testified that upon his retirement on 15th March 2023, the Respondent wrongfully deducted a sum of Kshs. 154,097.76 as union dues payable to KAWU.

12. The Claimant stated that on 20th June 2024, he instructed his advocates on record to issue a demand to the Respondent for payment of Kshs. 154,097.76, being deductions unlawfully made from his terminal benefits. That despite several demands for reimbursement, the Respondent has failed, neglected, and/or refused to refund the said amount.

Respondent's case

13. The Respondent called oral evidence through **Anthony Njagi** who testified as RW1. Mr. Njagi identified himself as the Respondent's General Manager, Human Resource Development. Similarly, he sought to rely on his witness statement and the documents filed on behalf of the Respondent to constitute his evidence in chief.

14.RW1 testified that on 19th February 2014, the then Cabinet Secretary for Labour, and Social Protection, issued Gazette Notice No. 1191, directing all employers with not less than five employees who are members of the KAWU to deduct a sum equivalent to two percent (2%) of each member's monthly basic earnings as trade union dues and remit the same to KAWU.

15.On or about 22nd April 2014, the Respondent entered into a Recognition Agreement with KAWU and subsequently negotiated and executed Collective Bargaining Agreements (CBAs) covering the periods 2014–2015, 2016–2019, 2020–2023, and 2024–2027.

16.According to RW1, the CBAs provided for the deduction of union dues or agency fees at the rate of 2% from the wages of the Respondent's employees in favour of KAWU.

17.RW1 further testified that the Claimant was among 507 employees in Job Grade S5 from whom the Respondent deducted union dues in favour of KAWU in December 2019. The total amount deducted from all affected employees amounted to Kshs. 38,669,171.20.

18. It was RW1's further testimony that in April 2020, the Respondent refunded the total amount of Kshs. 38,669,171.20 to all affected staff in Job Grade S5 who had been subjected to the deduction.

19. RW1 added that KAWU thereafter instituted *ELRC Cause No. 2204 of 2015, Kenya Aviation Workers Union v Kenya Airports Authority*, seeking recovery of the refunded union dues.

20. On 27th October 2020, the Court issued a Ruling granting garnishee orders against the Respondent's bank accounts, resulting in the sum of Kshs. 38,669,171.20 being garnished and remitted to KAWU.

21. Consequently, pursuant to the said court order, the Respondent effected deductions of union dues from all employees in Job Grade S5 and remitted the same to KAWU in November 2020.

Submissions

22. The Claimant submitted that the Respondent's assertion that he was in Job Grade S5, was unionisable, and therefore subject to agency fee deductions under the CBAs for 2014–2015, 2016–2019, 2020–2023, and 2024–2027 is unfounded. It was the Claimant's argument that the cited CBAs were never

registered in court and thus had no legal effect, meaning they could not apply to him. The Claimant maintains that his job group S5 was not unionisable.

23. The Claimant further argued that the Respondent's unlawful withholding of his benefits amounted to unfair labour practices contrary to Article 41 of the Constitution of Kenya, 2010.

24. It was additionally submitted by the Claimant that the Respondent discriminated against him by disregarding his management status, which rendered him non-unionisable, and by subjecting him to agency fee deductions unlike other management employees who were not subjected to similar deductions. In support of these submissions, reliance was placed on **OI Pejeta Ranching Limited v David Wanjau Muhoro [2017] KECA 329 (KLR)**.

25. The Claimant also contended that the Respondent violated his right to fair administrative action by failing to notify him of its intention to deduct Kshs. 154,097.76, contrary to Article 47 of the Constitution as read with Section 4 of the Fair Administrative Action Act.

26. The Respondent, on its part, submitted that the deductions of union dues from the Claimant's salary were lawful, valid, and procedurally effected in full compliance with statutory requirements and binding labour agreements.

27. The Respondent further argued that the deductions were undertaken pursuant to Section 49 of the Labour Relations Act, 2007, which permits the deduction of agency fees from unionisable employees who are not union members but are covered by a CBA negotiated by the union.

28. The Respondent maintained that the deductions were neither arbitrary nor selective but were uniformly applied to all employees in the relevant grade. According to the Respondent, the Claimant was therefore not subjected to discrimination, as the deductions were a statutory and contractual obligation applicable to all employees within his cadre.

29. The Respondent further submitted that the Claimant consistently benefited from the CBAs concluded between the Respondent and KAWU, and at no point did he object to receiving the enhanced terms of service. In the Respondent's view, the Claimant's acceptance of improved remuneration and allowances amounted to tacit acquiescence to the applicability of the CBAs.

Analysis and Determination

30. Having considered the pleadings by both parties, the evidence on record, and the rival submissions, the Court finds that the issues for determination are:

- i. Whether the Claimant's claim is statute-barred;**

ii. Whether the Claimant is entitled to the reliefs sought;

Whether the Claimant's claim is statute-barred

31. In its Notice of Preliminary Objection dated 17th March 2025, the Respondent contends that the present suit is time-barred, having been filed in contravention of the mandatory provisions of Section 90 (presently Section 89) of the Employment Act and Section 4(1) of the Limitation of Actions Act.

32. In support of the Objection, the Respondent submits that the deductions in dispute were effected between 2016 and 2020. In the Respondent's view, the cause of action is said to have arisen in 2016, the earliest point when the alleged wrongful deductions were made. On this score, the Respondent argues that, given that the suit was filed in 2024, eight years later, it is well beyond the statutory limitation period of three years. The Respondent further maintains that the delay is both inordinate and unexplained, rendering the claim statute-barred.

33. The Claimant, notably, did not address the issue of limitation in his submissions.

34. Pursuant to Section 89 of the Employment Act, a claim founded on a contract of service, such as the present one, must be instituted within three years from the date the cause of action arises.

35. A cause of action refers to the factual circumstances that give an individual the right to seek a legal remedy against another. (See **Attorney General & another v Andrew Maina Githinji [2016] eKLR**).

36. At the outset, the critical question for determination by the Court, therefore, is when the cause of action in this matter arose.

37. From the testimony of RW2, it emerges that the Respondent initially deducted Kshs 154,097.76 from the Claimant's salary as union dues payable to KAWU. In April 2020, however, the Respondent refunded a total of Kshs 38,669,171.20 to all staff members in Job Grade S5, including the Claimant, who had been subjected to such deductions.

38. Subsequently, KAWU instituted a suit against the Respondent seeking recovery of the refunded sums. Consequently, the Court issued garnishee orders against the Respondent's bank accounts, resulting in the remittance of Kshs 38,669,171.20 to KAWU and corresponding deductions from employees in Grade S5.

39. It is evident that the Respondent sought to recover this sum through the deduction of Kshs 154,097.76 from the Claimant's terminal dues, pursuant to the Respondent's internal memorandum dated 16th April 2024.

40. From the foregoing, it is evident that any cause of action arising from the initial deductions between 2016 and 2020 was extinguished once the Respondent refunded the deducted sums to the Claimant.

41. However, when the Respondent effected a fresh deduction of Kshs 154,097.76 from the Claimant's terminal dues pursuant to the internal memorandum dated 16th April 2024, a new cause of action arose. Accordingly, the operative date for limitation purposes is 16th April 2024 as opposed to 2016.

42. Applying Section 89 of the Employment Act to the case herein, it follows that the instant claim, having been filed on 25th October 2024, was well within the statutory three-year limitation period and therefore properly before the Court.

43. Consequently, the Court finds that the Respondent's Notice of Preliminary Objection dated 17th March 2025 on grounds of limitation is devoid of merit and is hereby overruled.

Reliefs?

44. The Claimant seeks the sum of Kshs 154,097.76 from the Respondent, representing amounts deducted from his terminal dues.

45. According to the Respondent, this deduction was made pursuant to a court order issued on 27th October 2020, arising from an application by KAWU to recover union dues that had previously been refunded to the Claimant and other employees in Job Grade S5.

46. In support of its position, the Respondent exhibited a copy of a Notice of Motion dated 20th April 2020, in which KAWU sought, *inter alia*, orders compelling the Respondent to release Kshs 38,669,171.20, representing previously deducted union dues, in compliance with Sections 48 and 49 of the Labour Relations Act.

47. In the same Notice of Motion, the Union further sought an order to compel the Respondent to deduct union dues from employees in Job Grade S5 with effect from January 2020.

48. Further, exhibited by the Respondent was a list of employees in Job Grade S5 liable for union dues deductions as of December 2019. The total dues amounted to Kshs 38,669,171.20, the same sum sought by the Union in its Notice of Motion dated 20th April 2020. Notably, the Claimant's name appears on the list with Kshs 154,097.76 attributed to him.

49. In addition, the Respondent exhibited copies of CBAs executed with KAWU, covering employees in Job Grades S1 to S5. Notably, the CBAs expressly provide that employees within these grades are unionisable.

50. It is common cause that at the time of his retirement, the Claimant was in Job Grade S5.

51. Consequently, as an employee in Job Grade S5, the Claimant was covered by the CBAs executed between the Respondent and KAWU. His contention that he was in management and not unionisable, therefore, does not hold.

52. The Claimant further argued that the CBAs were unregistered and thus lacked legal effect. However, the record shows that the CBA covering 1st January 2016 to 31st December 2019 provided at clause 6.1 for a salary increment of Kshs 7,521/- for employees in Job Grade S5.

53. The Respondent exhibited the Claimant's pay slip for December 2019, confirming he received the salary increment of Kshs 7,521/-. Therefore, this discounts his claim that he did not benefit from the CBAs.

54. Pursuant to Section 49 (1) of the Labour Relations Act, a trade union that has entered into a registered collective agreement with an employer may request the

Minister to issue an order directing the employer to deduct agency fees from the wages of every unionisable employee covered by the agreement who is not a member of the union.

55.Despite the Claimant’s assertion that he was not a member of KAWU, the evidence shows he benefited from the CBAs and was therefore liable to pay agency fees to the union.

56.In light of the foregoing, the Court finds that the deduction of Kshs 154,097.76 as trade union dues, which were duly remitted to KAWU, was lawful. Accordingly, the Claimant’s claim seeking to recover the sum of Kshs 154,097.76 fails.

57.The Claimant further alleged that the Respondent discriminated against him by deducting Kshs 154,097.76 from his terminal dues, unlike other employees.

58.Black’s Law Dictionary (10th Edition) defines discrimination as ***“Differential treatment; a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.”***

59. In the present case, the Claimant's allegation of discrimination was not supported by any credible evidence. Notably, he did not identify any specific employee in a similar position (Job Grade S5) who was subject to the deduction of trade union dues but was exempted from such deductions.

60. On the contrary, the record bears that the Respondent had identified all employees in Job Grade S5 who were subject to trade union deductions as of December 2019, totaling the sum of Kshs 38,669,171.20.

61. In the premises, the Court finds that the claim of discrimination is unsubstantiated and therefore fails.

Orders

62. In the end, the claim is dismissed in its entirety with no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of November, 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant

Mr. Museve

For the Respondent

Mr. Njagi

Court Assistant

Elijoy

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 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