

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI**

CAUSE NO. E351 OF 2025

**KENYA NATIONAL UNION
OF NURSES AND MIDWIVES**

CLAIMANT

v

**CHIEF EXECUTIVE OFFICER
NATIONAL POLICE SERVICE COMMISSION
RESPONDENT**

EMPLOYMENT AND LABOUR RELATIONS COURT

JUDGMENT

1. The Kenya National Union of Nurses and Midwives (the Union) sued the Chief Executive Officer of the National Police Service Commission (the Respondent) on 24 April 2025, and it stated the Issue in Dispute as:

(i) Refusal to deduct and remit trade union dues.

(ii) Refusal to sign recognition agreement.

2. The Union filed an Amended Statement of Claim on 21 May 2025.

3. The Respondent filed a Response on 18 September 2025, and on 24 September 2025, the

parties indicated that they intended to proceed by way of the record and submissions to be filed.

4. The Union filed its submissions on 14 October 2025, and the Respondent on 12 November 2025 (outside the agreed timelines and without any

explanation.)

5. The Union set out the Issues for determination in the submissions as:

(i) Whether the actions of the Respondent offend the law?

(ii) Whether the nurses employed in the category of civilian have a right to form join and participate in the activities and programmes of a trade

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(iii) Whether the Claimant has met the requirements in law for the deduction of union dues?

(iv) Whether the Claimant has met the requirements in law for signing of a recognition agreement?

(v) Whether the Respondent is mandated in law to deduct and remit union dues

(vi) Whether the Respondent should be compelled to pay union dues from its own funds?

6. The Court has considered the pleadings, evidence and submissions.

7. Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024, contemplates the determination of disputes based on the record.

8. The Rule provides

59 Determination by documentary evidence

The Court may, either by an agreement by all parties, or on its own motion, proceed to determine a suit before it on the basis of

pleadings, affidavits, documents filed and submissions made by the parties.

9. The Rule envisages that evidence will be introduced through affidavits and documents filed.

The Union filed a supporting affidavit to a Motion which was filed contemporaneously with the Statement of Claim.

10. The Respondent did not file any affidavit but relied solely on the Response and submissions.

11. From the Union's affidavit, it emerges that it is a registered trade union and it forwarded to the Respondent check-off forms (Form S) and a draft recognition agreement on or around 9 December 2024.

12. The Respondent did not yield, and the Union reported a trade dispute to the Cabinet Secretary, Labour, and he appointed a Conciliator.

13. The dispute was not resolved at conciliation, and the Union moved to Court.

Deduction of union dues

14. The Respondent did not deny that the Union had recruited 19 of its employees serving as nurses.

15. The Respondent's explanation for the failure to deduct and remit trade union dues from the nurses was that the employees, the subject of the dispute, were deployed to the National Police Service under the authority of the Inspector General and thus their right to join and participate in trade union activities and programmes is curtailed by the limitation in Article 24(5) of the Constitution.

16. To buttress the submission, the Respondent cited the definition of *member of the service* in section 2 of the National Police Service Act that:

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includes civilian members of staff of the Service;

and the limitation set out in section 47 of the Act.

17. Section 47(1) of the Act states:

Limitation of rights and fundamental freedoms of police officers

Subject to Article 24, 25 and 35 of the Constitution, the rights and fundamental freedoms of an officer of the Service may be limited for the purposes, in the manner and to the extent set out by law.

18. The question that arises is whether a member of the service is the same as an officer of the service.

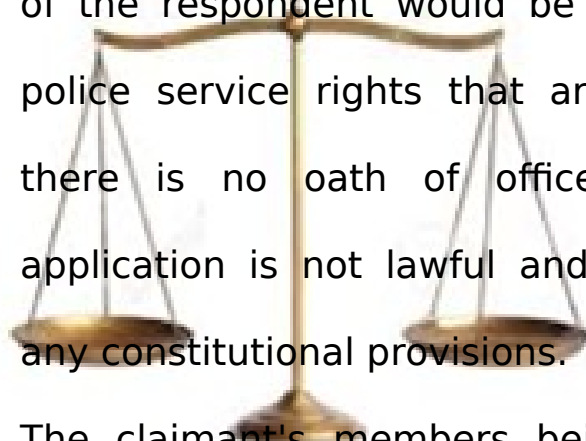
19. This Court differently constituted answered the question in Nairobi Cause No. E850 of 2021, *Kenya National Union of Nurses v National Police Service Commission*, wherein the Court held:

For all intents and purposes, Article 24(5) (d) apply to labour relations with regard to national police service and not any civilian in the service of the respondent. To interpret such provisions in any other manner would be to negate the provisions of Article 41 of the Constitution outside the context of the derogation. The claimant members in the

service of the respondent are nurses. They have not taken the oath of office as members of the national police service. were this to be taken as the respondent asserts, then every person in its service from the cook, the cleaner, the mail person, the honey harvester and all casual and laypersons in the service of the respondent would be conferred with police service rights that are not due yet there is no oath of office taken. Such application is not lawful and not based on any constitutional provisions.

The claimant's members being nurses are recruited by the respondent to undertake their professional duties and unless they have received training as police officers and taken through the oath of office, they remain nurses and members of the claimant as of right and which allow for unionisation under Article 41 of the Constitution. The provisions

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of Section 93 of the National Police Service Act cannot override the provisions of Article 41 of the Constitution with regard to unionisation of employees the respondent who are unionisable within the meaning of Article 24(5) of the Constitution.

20. The Respondent was aware of this decision. It did not bring it to the attention of the Court. That is regrettable because it cannot claim that it was not aware of the judgment. It had a duty to alert the Court to the existence of the decision as it directly impacts the instant dispute.

21. The Court cannot tell if the Respondent appealed against the decision.

22. This Court endorses the decision cited herein above.

23. In this Court's view, the Respondent has no lawful reason to fail to deduct and remit trade union dues in respect to the employees who had joined the Union.

Recognition agreement

24. The Union did not place before this Court any evidence that it had recruited a simple majority of the unionisable employees of the Respondent or that its Constitution allowed it to organise within the Respondent's sector.

25. The action for recognition therefore had no evidential anchor and is for rejection.

Conclusion and Orders

26. In light of the foregoing, the Court orders:

- (i) The Respondent to commence the deduction and remit to the Union monthly trade union dues from the 19 employees who signed Form S with effect from 1 December 2025.

27. The action for recognition is dismissed.

28. No order on costs considering the anticipated social partnership between the parties.

Delivered virtually, dated and signed in Nairobi on this 13th day of November 2025.

Radido Stephen, MCI Arb
Judge

Appearances

For Claimant

Mr Ruteere, Industrial
Relations Officer

For Respondent

Ms Rwenji, Advocate

Court Assistant

Wangu



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