



Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) v Board of Management, Wambasa Girls Secondary School (Cause E042 of 2025) [2025] KEELRC 3292 (KLR) (24 November 2025) (Judgment)

Neutral citation: [2025] KEELRC 3292 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E042 OF 2025
JK GAKERI, J
NOVEMBER 24, 2025**

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS (KUDHEIHA) CLAIMANT**

AND

**BOARD OF MANAGEMENT, WAMBASA GIRLS SECONDARY
SCHOOL RESPONDENT**

JUDGMENT

1. The claimant commenced the instant suit by way of a Memorandum of Claim dated 10th June, 2025 and filed on 13th June 2025 praying for orders that:-
 - i. The Respondent be compelled to commence deduction and remittances of union dues to the union.
 - ii. The Respondent remits arrears of union dues effective March 2024 to date.
 - iii. The Respondent be Ordered to sign a Recognition Agreement.
 - iv. Costs of the suit.
 - v. Any other Orders as the court deemed just.
2. The claimant’s case is that employees of the respondent became members of the union on 13th February, 2024 by signing the check off forms which the claimant forwarded to the respondent vide letter dated 19th February 2024 which was received and stamped but not honoured and attempts by the claimant to have union dues deducted failed, a physical visit on 26th September 2024 notwithstanding.
3. That the claimant union had attained a simple majority of unionisable employees of the respondent.



4. The union avers that it reported the dispute to the Ministry of Labour and Social Protection and conciliation process begun but the respondent did not attend conciliation meetings scheduled for 24th February 2025 and 10th March 2025 having been aware of the meetings which culminated in the issuance of a certificate of unresolved dispute dated 14th March 2025, by the conciliator.
5. The claimant cited the provisions of Section 19(1) of the [Employment Act](#), Section 48 of the [Labour Relations Act](#) and Article 41(2) of [the Constitution](#) of Kenya 2010.

Respondent's case

6. Vide a response to the claim dated 3rd September 2025, the respondent stated that the claimant wanted the Respondent to effect deductions without any recognition agreement and a legal notice contrary to Sections 54 and 48 of the [Labour Relations Act](#) and no agreement had been entered into.
7. That formal consent of the employees was never provided. It denied having frustrated the signing of the recognition agreement as the communication was channelled through a defunct email address.
8. That deductions were to commence after the recognition agreement was signed but copy of the agreement was not shared.
9. That the suit was filed prematurely contrary to the doctrine of exhaustion.
10. The respondent prayed for dismissal of the suit with costs.
11. Hearing of the case was delayed by the respondent's non-appearance in court on 2nd July 2025, 16th July, 2025, and 31st July 2025 when the court fixed the matter for hearing on 6th October 2025 on which date the claimant proposed that the same proceeds by way of written submissions and Mr. Kajo for the respondent was agreeable and directions on the filing and exchange of submissions were issued with a mention slated for 13th November 2025.

Claimant's submissions

12. According to the claimant, its membership at the respondent institution had attained the threshold for a Recognition Agreement and a draft copy was shared on email on 3rd September 2024 but the Principal of the respondent school was unco-operative and efforts by the conciliator yielded no positive results and had reached the end of the tether.

Respondent's submissions

13. On conciliation, counsel for the respondent submitted that the Recognition Agreement was sent to a defunct email address and the respondent's right to fair administrative action was violated.
14. Reliance was placed on the sentiments of the Court in Kenya Plantation & Agricultural Workers Union V Roseto Flowers Ltd [2021] eKLR, and KUDHEIHA V Nairobi Hospital [2020] eKLR to urge that the foundation of the suit was defective because the conciliation process was flawed.
15. On deduction and remittance of union dues, counsel submitted that a check-off system had to be established via legal Notice and check-off forms and that had not been done and deductions would violate Section 19(1)(f) of the [Employment Act](#) citing the decision in Kenya Tea Growers Association V Kenya Plantation & Agricultural Workers Union, on employee consent before deduction from his/her salary is made.
16. On the recognition agreement, counsel submitted that there was no verification report, check-off forms or engagement of the respondent for verification process.



17. Reliance was placed on the decision in *Communication Workers Union V Safaricom Ltd* [2014] eKLR for the proposition that the employer's obligation to recognize a union arises when the union meets the threshold under section 54 of the *Labour Institutions Act* and the claimant had not proved so.
18. On alleged violations of constitutional rights counsel submitted that the right to associate, join a union and engage in collective bargaining were not absolute citing the decision in *Kenya Game Hunting & Safari Workers Union v Safari Part Hotel* [2013] eKLR.

Analysis

19. Documentary evidence availed by the claimant revealed that seven (7) employees of the respondent signed a check-off sheet on 13th February 2024. It is evident that the date was inserted by the same person and all employees had union membership numbers.
20. It is also not in contest the respondent's Principal/B.O.M Secretary was notified of the development vide letter dated 19th February 2024 and requested to deduct and remit union dues to the appropriate Bank Account numbers.
21. Neither the Principal nor the B.O.M. of the respondent responded to the letter and notice of deductions as evidenced by the reminder dated 28th May 2024 forwarded vide email address wambasagirls2014@yahoo.com on 28th June 2024.
22. A visit scheduled for 4th July 2024 as a follow up did not materialise and another was scheduled for 10th July 2024 vide letter dated 5th July 2024 sent through the same email address.
23. Further documentary evidence revealed that vide email dated 3rd September 2014, the claimant forwarded a copy of the draft Recognition Agreement for perusal by the respondent. The claimant had proposed that the same be signed on 18th September 2024 at 10:00am at the respondent's school, which was postponed to 26th September 2024 but to no avail and the claimant reported the dispute to the Minister for Labour vide letter dated 14th January 2025 pursuant to which Mr. Mwimalli was appointed conciliator vide letter dated 5th February 2025.
24. The respondent did not honour any of the invitations by the conciliator dated 18th February 2025 and 26th February 2025 which culminated in the issuance of a certificate of unresolved Trade Dispute dated 19th March 2025, which paved the way for the instant suit.
25. The respondent's non-attendance of the two meetings convened by the conciliator was the sole reason for the failed conciliation process.
26. While the claimant maintains that the respondent was supposed to deduct union dues effective February 2024, the respondent argued that a recognition agreement was a prerequisite for union deductions.
27. Relatedly, the claimant sought an Order to compel the respondent to sign a recognition agreement on the premise that it had recruited a simple majority of employees of the respondent.
28. Consequently, the issue for determination are:
 - i. Whether a recognition agreement is a prerequisite for deduction of union dues by an employer.
 - ii. Whether the respondent ought recognize the claimant union.
29. Concerning the 1st issue it is trite law that every worker enjoys the constitutional right to form, join or participate in the activities and programmes of a trade union including the right to go on strike.



30. Under Section 2 of the *Labour Relations Act*, a trade union means an association of employees whose principal purpose is to regulate relations between employees and employers including any employer's organization.
31. On union membership, every employee who is unionisable and who has attained the age of 18 has the right to union membership, which requires payment of a membership fee or joining fee and regular subscription.
32. Section 48 of the *Labour Relations Act* provides:
1. 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.
 2. A trade union may, in the prescribed form, request the Cabinet Secretary 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.
 3. An employer in respect of whom the Cabinet Secretary 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.
 4. The Cabinet Secretary may vary an order issued under this section on application by the trade union.
 5. 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.
 6. 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.
 7. A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.
 8. An employer shall forward a copy of any notice of resignation he receives to the trade union.
33. Implicit under these provisions, union membership is conditional upon membership and payment of trade union dues.
34. In *Lochab Brothers Ltd V Transport Workers Union* [2024] KECA 965 (KLR) the Court of Appeal stated:
- “The purpose or consequence of signing a recognition agreement is to give the union a right to negotiate a collective bargaining agreement while deduction and remittance of union dues by an employer is found on two things; first is a directive Order issued by the minister and second is service of Form S which contains the signatures of employees authorising deductions of union dues from their salaries”.



35. Similarly, in *Kenya Concrete Structural Ceramic, Tiles, wood Plys and Interior Design Workers Union V Wanxin Investments Ltd* [2021] eKLR Rika J. said:

“Deductions and remittances of trade union dues flows from relevant ministerial Order and check-off forwarded to the respondent...”

36. Nzioki wa Makau J. expressed similar sentiments in *Kenya County Government Workers Union V Nairobi Water & Sewerage employees* [2022] KEELRC 1122 (KLR).

37. Significantly, the respondent neither denied receipt of the check-off Forms dated 24th February 2024 nor the employment status of the seven (7) individual signatories, implicitly acknowledging that the seven (7) employees were indeed members of the claimant union.

38. In *Modern Soap Factory V Kenya Shoe and Leather Workers Union* [2020] eKLR, the Court of Appeal held that the question whether an employee was a member of a union or not was one of fact and evidence of membership was thus necessary and could not be determined as preliminary issue.

38. The upshot of the foregoing is that union membership is based on subscription and payment of union dues. It accords the union locus standi to institute claims on behalf of its members.

39. In the instant case, although the claimant did not avail union membership cards or receipts of the seven (7) signatories, the claimant’s uncontroverted evidence is, in the court’s view sufficient for the court to find that the seven (7) employees were members of the claimant union.

40. Section 2 of the *Labour Relations Act* defines Recognition Agreement as

An agreement in writing made between a trade union and an employer, group of employers or employers’ organisation regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers’ organisation.

Similarly, under Section 54 of the Act,

1. 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.

Clearly, the purpose of a recognition agreement under the foregoing provision is exclusively collective bargaining.

41. This position was fortified by the Court of Appeal in *Modern Soap Factory Ltd V Kenya Shoe and Leather Workers Union* (supra) in the following rendition:

“...It is a bilateral agreement between a trade union and an employer on the basis of which the trade union engages with the employer regarding the terms and conditions of employment of its members.

It is not the basis upon which the trade union represents its members in court. As the learned Judge correctly stated the two roles are distinct”.

42. From the foregoing, it is the finding of the court that contrary to the respondent’s contention, deduction and remittance of union dues by a trade union was not dependent on the existence of a Recognition Agreement between the trade union and the employer or group of employers.



43. Importantly, union membership is the foundation of a recognition agreement and thus, cannot be the basis upon which deduction and remittance of union dues by an employer depend.
44. Finally, as to whether the respondent ought to recognize the claimant union, while the claimant averred that it had forwarded a copy of the Recognition Agreement to the respondent who did not respond or participate in the conciliation process, the respondent argued that it did not received the emails sent by the claimant union because the particular email address was defunct.
45. It is unclear to the court why the claimant union insisted on using the email without a follow up to confirm receipt of the document and availed no evidence of receipt of the Recognition Agreement by the respondent.
46. More significantly, although the claimant union claimed that it had enlisted a simple majority of the respondent's unionsable employees, it did not provide any evidence to reinforce the assertion. It did not demonstrate the total number of unionsable employee of the respondent for the respondent's response.
47. In *Cello Thermoware Ltd V Kenya Union of Commercial Food and Allied Workers* [2022] KECA 54 (KLR) the Court of Appeal stated:

“In effect whether or not a simple majority specified by Section 54(1) was achieved at a particular point in time is a matter of fact.

This is because, the computation of a simple majority at a particular point in time is an arithmetical calculation based on the total number of the appellant's unionisable employees against the total number of unionisable employees registered by the respondent.

To discern whether the respondent had registered a simple majority of the appellant's unionisable members by the time the dispute was lodged will require firstly the total number of unionisable employees...”

48. Similarly, in *Civicon Ltd V Amalgamated Union of Kenya Metal Workers* [2016] eKLR the Court of Appeal held that:

“Unionisable employees must not be confused with the total work force engaged by the employer. Only members of staff who are eligible for membership (unionisable members) are targeted... It must be borne in mind that the trial court is only concerned with the numbers as at the time the claim is made...”

49. In the instant case, there was no evidence of the total number of unionisable employees the respondent had at the time so as to compute a simple majority for purposes of the Recognition Agreement.
50. For the foregoing reasons, it is the finding of the court that the court has no basis to Order the parties to sign a Recognition Agreement.
51. In the upshot, the claimant's suit against the respondent is partly successful and the following Orders commend themselves:
 - a. Respondent to commence deduction and remittance of union dues in respect of the 7 members of the claimant's union.
 - b. Respondent to remit arrears of union dues for the 7 members of the claimant union effective April 1st 2024.



c. Respondent to reimburse the claimant's costs of Kshs.10,000.00.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 24TH DAY OF NOVEMBER 2025.

DR. JACOB GAKERI

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.

DR. JACOB GAKERI

JUDGE

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