

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

CAUSE NO. E470 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

BANKING, INSURANCE & FINANCE UNION (KENYA)

.....**CLAIMANT**

VERSUS

OCCIDENTAL INSURANCE COMPANY LIMITED..RESPONDENT

JUDGMENT

1. The Claimant Trade Union sued the Respondent vide a Statement of Claim dated 26th May, 2025 and sought the following reliefs:-

(a) An order declaring the Respondent's actions of stopping the deduction and remittance of trade union dues to the Claimant unlawful.

(b) An order compelling the Respondent to immediately commence deduction and remittance of trade union dues to the Claimant.

- (c) That the Respondent do pay trade union dues from its own reserves as from January 2025 upto the date of payment of such dues.
- (d) That the Court do award costs of the suit to the Claimant.

2. The Claimant pleaded:-

- (a) that the Respondent was formerly under the **FKE Group of Insurance Companies** which had negotiated a Collective Bargaining Agreement, before opting out and signing a separate Recognition Agreement on **23rd January, 2018**.
- (b) that the Claimant and the Respondent have entered into several collective bargaining agreements, the last one being for the period **January 2023 to December 2024**.
- (c) that trade union deductions are set in **Legal Notice No. 169 of 2024** at 1% of basic salary, subject to a minimum of Kshs.250/= and a maximum of Kshs.1,500/=.
- (d) that as from January 2025, the Respondent stopped deduction and remittance of union dues

from the Claimant's members' salaries; and did so intentionally, unlawfully and unilaterally.

- (e) *that the Respondent's dictatorial tendency is demonstrated by its refusal to grant the Respondent access for lawful purposes or activities as per the Recognition Agreement, and has been harassing/intimidating and victimizing elected workers representatives due to [on account] of trade union membership/activities.*
- (f) *that none of the trade union members has resigned from the union, since the union has not received resignation letters pursuant to **Section 48(6) of the Labour Relations Act, 2007.***
- (g) *that the employees of the Respondent have a Constitutional right under **Articles 36(1)(2) & 41(2)(c) [of the Constitution of Kenya] and Section 4 of the Labour Relations Act 2007** to form, join or participate in activities and programmes of a trade union of their choice.*
- (h) *that the employees have exercised their legal mandate and authority as pertains to statutory deductions from their salaries as provided under*

**Section 48(3) of the Labour Relations Act
and Section 19(1)(f) & (g) of the Employment
Act.**

3. Documents filed alongside the statement of claim include an affidavit in verification of the claim, and a witness affidavit of **Tom. O. Odero**, the Claimant's **1st Deputy General Secretary**, sworn on 26th May, 2025; restating and amplifying the foregoing averments.
4. Documents annexed to the said witness affidavit include copies of a Recognition Agreement signed by the Claimant and the Respondent on 18th January, 2018, a Collective Bargaining Agreement for the period January 2023 to December 2024, Legal Notice No. 169 dated 18th October, 2024, employees' payslips for the months of January, February and March 2025 demonstrating non-deduction of trade union dues, and a letter on a Trade Dispute dated 3rd February, 2025. Also filed is the Claimant's written authority (dated 22nd May, 2023) authorising 3 officials, including **Tom. O. Odero**, to sign documents and to represent the Union in Court.

5. The suit was filed contemporaneously with an interlocutory application dated 26th May, 2025, seeking orders that are similar to those sought in the main suit. The application has since been withdrawn with no order as to costs, **by consent** of both parties. Further, parties herein **consented** to determination of the suit herein **pursuant to Rule 59 of the Employment and Labour Relations Court (Procedure) Rules 2024**. A written consent in the foregoing regard, **dated 30th June, 2025**, was filed in Court; and the same was **adopted** as orders of the Court on **9th July, 2025**.

6. The Respondent filed a Response to the Statement of Claim dated 13th June, 2025, and **admitted** having signed a Recognition Agreement with the Claimant, and several Collective Bargaining Agreements, the last being for the period 1st January, 2023 to 31st December 2024.

7. The Respondent further pleaded;-

(a) that the Respondent has completed the process of terminating and derecognizing the Claimant in

accordance with provisions of the Recognition Agreement and **Section 54(5) of the Labour Relations Act 2007**, which the Claimant did not contest.

- (b) that instead of addressing the issues of derecognition, the Claimant has been harassing the Respondent by instituting several trade disputes on unfounded allegations, including the suit herein.
- (c) that the Respondent has never hindered any worker from forming, joining or participating in activities and programmes of a trade union of their choice, and has allowed the Claimant to hold meetings at the Respondent's premises.
- (d) that the Respondent is bound to deduct union dues **only** when there is a binding recognition agreement and a collective bargaining agreement between the parties involved.
- (e) that the Claimant has never served the Respondent with the Legal Notice referred to in the Claim.

(f) *that the Claimant has failed to disclose material facts to the Court, including the current legal relationship between the parties, **as there is no current recognition agreement and collective bargaining agreement in place**; and that this is an effort to mislead the Court.*

8. The Respondent also filed a witness affidavit of **Luke Musee** sworn on 13th June, 2025, restating and amplifying the foregoing averments. Documents annexed to the said witness statement include copies of the Recognition Agreement dated 23rd January, 2018, a Collective Bargaining Agreement for the period 1st January, 2023 to 31st December, 2024, **the Respondent's application to the National Labour Board (dated 23rd October, 2023) and copied the Claimant for termination of the Recognition Agreement pursuant to Section 54(5) of the Labour Relations Act**, a follow up letter dated 19th August, 2024 (copied to the Claimant), and the Claimant's letter to the Cabinet Secretary (dated 24th August, 2024) reporting the existence of a Labour Dispute between the parties herein, among others.

9. As already stated elsewhere in this Judgment, parties herein **consented** to have the suit herein determined by this Court pursuant to Rule 59 of the Employment and Labour Relations Court (Procedure) Rules 2024. The said Rule provides as follows:-

“59. 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.”

10. Both parties filed and exchanged written submissions pursuant to the consent orders referred to at paragraphs 5 and 9 of this Judgment.

11. Having considered the pleadings filed herein, the witness affidavits filed and documents therewith filed, issues that fall for determination, in my view, are:-

(a) Whether the Respondent is obligated to deduct union dues from salaries of its employees who are members of the Claimant

Trade Union, and to remit such dues to the Claimant.

(b) Whether the reliefs sought by the Claimant are merited.

12. On the first issue, it is not in dispute that the Respondent has, in its employment, employees who are members of the Claimant Trade Union, and from whom the Respondent has for years deducted union dues and remitted the same to the Claimant. It is also a common ground that the Respondent **stopped** deducting and remitting union dues effective January 2025, which date coincided with the lapse of the last Collective Bargaining Agreement between the Claimant and the Respondent, which is said by both parties to have lapsed on 31st December, 2024.

13. The Respondent based its halting of deduction of union dues on the said lapse of the last CBA and the fact that it on **25th October, 2023** applied to the National Labour Board for termination of the Recognition Agreement that it had signed with the Claimant Union; **pursuant to Section 54(5) of the Labour Relations Act.** The Respondent referred the

Court (in its witness affidavit) to its letter to the National Labour Board dated 19th August, 2024 where it stated:-

“. . . we note that we have yet to receive a formal response to our notification or any reply/contestation from the Ministry nor the Union regarding our notice of termination. We therefore confirm that the company will proceed to derecognize the union and will not negotiate a new Collective Bargaining Agreement with the union come the expiry of the current agreement.”

14. Section 54(5) of the Labour Relations Act provides as follows:-

“(5) An employer or a group of employers’ association may apply to the Board to terminate or revoke a recognition agreement.”

15. In my view, the operative word in the foregoing statutory provision is **“apply”**. An employer or employers’ association intending to terminate and/or revoke a

recognition agreement is required by the aforesaid statute to **“apply”** to the **Board** to terminate or revoke the recognition agreement. The power to allow or reject revocation and/or termination of a recognition agreement lies with the **Board**. Under Section 2 of the Labour Relations Act, the term **“Board”** refers the **National Labour Board**.

16. An employer or an employers’ association **cannot** arrogate to itself the power to revoke or to terminate a recognition agreement. Parties to a recognition agreement may agree on the notice period which any party wishing to have the agreement terminated must give to the other, but **an application** for termination and/or revocation of the agreement must be made to the **National Labour Board**.
17. In the present case, the Respondent wrote to the National Labour Board on 25th October, 2023 and stated, in part:-

“ . . . It is on the above basis that we hereby apply to terminate the Recognition Agreement in accordance with Section 54(5) of the Labour Relations Act of 2007.”

18. The National Labour Board is **NOT** shown to have **allowed** or **rejected** the foregoing application. Indeed, it has not been shown that the National Labour Board **ever** responded to the said application. The fact that the Trade Union is not shown to have contested the application is **not** reason for the Respondent to **assume** that the recognition agreement was terminated and/or revoked, as stated in its letter to the Board dated **19th August, 2024**, part of which is reproduced at paragraph 13 of this Judgment. The Court of Appeal stated as follows in **Mikato Safaris - vs - Kenya Game Hunting & Safari Workers Union (Civil Appeal No. 37 of 2014) [2017] (KLR):-**

“21. What the appellant simply did was to notify the respondent and the National Labour Board that upon expiry of the aforesaid period(s) of time, it would terminate the Recognition Agreement and stop deducting and paying Agency fees to the respondent.

22. The Correct procedure was to apply to the National Labour Board to terminate the Recognition Agreement, having given the

notices to the respondent. An application may be granted or rejected. The dispute resolution process as set out under Part VIII would then kick in.”

19. I return a finding that the Recognition Agreement signed by the Claimant Trade Union and the Respondent (Employer) on **23rd January, 2018** is still in place.

20. On whether the Respondent is obligated to deduct trade union dues and to remit the same to the Claimant, it follows that the Respondent is **obligated** to deduct and to remit union dues from its employees who are members of the Claimant Union, as it has done for years.

21. Consequently, and having considered written submissions filed on behalf of both parties, judgment is hereby entered for the Claimant against the Respondent as follows:-

(a) A declaration that the Respondent’s act of not deducting and remitting trade union dues to the Claimant was unlawful.

(b) An order is hereby issued compelling the Respondent to forthwith resume deduction of

trade union dues, and remittance of the same to the Claimant.

(c) The Respondent shall, within thirty (30) days of this Judgment, pay to the Claimant Trade Union a sum of Kshs.80,000/= being reasonable reimbursement of money spent in litigation herein, pursuant to Rule 70(4) of the Employment and Labour Relations Court (Procedure) Rules 2024.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
28TH DAY OF NOVEMBER 2025**

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Munoru for the Claimant

Mr. Osodo William holding brief for Mr. Philip Onyango for the
Respondent

ORIGINAL