

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT

ELDORET

CAUSE NO. E072 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

**KENYA UNION OF COMMERCIAL,
FOOD AND ALLIED WORKERS
CLAIMANT**

VERSUS

**JUBILEE MERCHANTS
LIMITED RESPONDENT**

JUDGMENT

1. The Claimant is a trade union registered under the Labour Relations Act to represent employees engaged in the commercial sector as more specifically set out in the membership clause of its constitution.
2. The Respondent is a limited liability company and engages in the business of supermarket/retail and wholesale shop within Kapsabet town in Nandi County.
3. The Claimant union is the appropriate trade union for the Respondent's employees.

4. It is the Claimant's case that it has recruited 56 out of a possible total of 98 employees of the Respondent which translates to 57% and therefore above the 51% simple majority required by law under section 54(1) of the Labour Relations Act for recognition of a trade union by an employer.
5. The Claimant avers that by letter dated 23rd January, 2024 it forwarded to the Respondent check-off forms signed by the Respondent's employees recruited into the membership of the Claimant for the Respondent to commence deduction of union dues and remit to the Claimant but the Respondent refused or omitted to do so.
6. The Claimant avers that the Respondent resorted to unfair labour practice and made several attempts to force employees to sign new contracts through coercion, threats, intimidation and victimization.
7. The Claimant avers that the Respondent's failure to recognize the union is unlawful and violates Article 41 of the Constitution which obliges it to observe, respect, promote and uphold the rights of its employees to fair labour practices, fair remuneration and reasonable working conditions.

8. The Claimant avers that the action of the Respondent is further in violation of ILO Conventions No. 87 and 98.
9. The Claimant therefore prays for the following reliefs:
 - a) That the Honourable Court award in favour of the Claimant Union and order the Respondent to recognize the Claimant Union.
 - b) That the Respondent to deduct and remit union dues.
 - c) That the union dues arrears from February 2024, be remitted by the Respondent from their account.
 - d) That the Respondent be ordered not to victimize employees on account of their union membership.
 - e) That the Respondent be ordered to stop unfair labour practice
 - f) That parties do engage in Collective Bargaining within 60 days upon signing of the Recognition Agreement.
 - g) This Honourable court grant any other relief as it may deem fit.
 - h) Cost of the suit to be borne by the Respondent.
10. The Respondent avers in its submissions that it filed a Statement of Defense dated 3rd October, 2024, but the court record does not reflect that it filed a defense.

11. The Respondent however, filed a witness statement of Emmanuel Kipruto, the Manager of the Respondent, in which he deposes that the Respondent was never served with check-off forms by the Claimant. He further deposes that there have never been any sittings, meetings or communication between the Claimant and the Respondent.
12. Mr. Kipruto deposes that the Respondent had 198 employees as at March, 2025 in all its branches according to the data kept by the Respondent. He deposes that out of the 56 employees alleged to have signed the check off forms, 12 names are not employees of the Respondent. Further, that 3 names have been repeated and 14 have left employment. That the remaining 27 names constitute only 13.63% of the employees of the Respondent.
13. Mr. Kipruto denies that there has been any coercion, intimidation and/or victimization of employees by the Respondent.
14. The suit was disposed of by written submissions.

Claimant's Submissions

15. The Claimant submitted that section 54 of the Labour Relations Act is clear on recognition of a trade union which has attained a simple majority.
16. It is submitted that the Claimant attained a simple majority of 56 out of 98 employees at the time of filing the instant claim. That the Respondent thereafter forced employees to sign three month contracts or face termination of their employment. The Claimant urged the court to declare such action unlawful, relying on the decision in **Kenya Airways Limited v Satwant Singh Flora [2013] eKLR** where the court stated *“No person can claim any right or remedy whatsoever under an illegality in which it has participated”*
17. The Claimant submitted that the Respondent cannot seek enforcement of a right that was done/enforced through falsehood, misrepresentation or illegalities. It urged the court to examine the facts and evidence presented and make a finding that the Respondent participated in irregularities in its attempts to have a right asserted.
18. The Claimant submits that since recruitment is a continuous process it has recruited more employees of the Respondent and continues with the recruitment exercise.

19. On deduction and remittance on union dues, the Claimant submits that it recruited the Respondent's employees and forwarded check off forms to the Respondent for purposes of deduction of union dues.
20. It is submitted for the Claimant that Article 41(2)(c) and 36 of the Constitution and section 4(1) of the Labour Relations Act guarantee freedom of association, which includes the right of an employee to belong to a trade union and participate in its activities.
21. It is submitted that payment of union dues by members of a union is an obligation that goes hand in hand with the right to join a trade union. That section 48(2) and (3) of the Labour Relations Act provide for deduction of union dues by employers. That compliance by employers is provided in mandatory terms and it is not up to an employer to decide whether or not to comply. That the Respondent is therefore mandated to effect deductions of union dues from the Claimant's members and remit the same to the Claimant's bank account.
22. The Claimant submits that the allegation of the Respondent that it has 173 employees yet its remittance to NSSF and NHIF

is 55 and 95 respectively leaves a lot of questions on the number of employees as stated by the Respondent.

23. The Claimant urges the court to grant the reliefs sought in its Memorandum of Claim.

Respondent's Submissions

24. The Respondent filed submissions dated 3rd June, 2025. It submits that the Claimant has not met the threshold for recognition by the Respondent being recruitment of 50%+1 of the unionisable employees of the Respondent as provided in section 54 of the Labour Relations Act. The Respondent relies on the decision in **Kenya Union of Commercial Food and Allied Workers v Delmonte (K) Ltd [2012] eKLR** where the court held:

“A trade union must attain more than 50% of the unionisable employees before an employer can be compelled to sign a recognition agreement.”

25. The Respondent submits that the court further noted that failure to meet this threshold renders any claim for recognition legally untenable.
26. The Respondent submitted that the number of employees of the Respondent has fluctuated over the period relevant for this case from 173 in July, 2024 to 219 as at March, 2025.
27. It is submitted that at the time of filing suit the Claimant had 41 members constituting 24% while currently it has 27 members which is 13.63%. That the Claimant therefore does not have a simple majority.
28. The Respondent prays that the Claim be dismissed with costs.

Analysis and Determination

29. From the pleadings on record and the submissions filed, the issues that arise for determination by the court in this case are the following: -
 - a) Whether the Claimant has satisfied the requirements for recognition and deduction of union dues by the Respondent,
 - b) Whether the Claimant is entitled to the reliefs sought in the Memorandum of Claim.

Whether the Claimant has satisfied the requirements for recognition and deduction of union dues by the 1st Respondent

30. Deduction and remittance of union dues is provided for in section 48 of the Labour Relations Act as follows:

48. Trade union dues.

(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 Minister 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 Minister 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 Minister 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.

31. Based on the provisions of section 48 of the Labour Relations Act, an employer who has received Form S set out in the Third Schedule (commonly referred to as Check-off Form) signed by employees in respect of whom the employer is required to make a deduction is under obligation to make such deductions the month following receipt of the forms.
32. In the instant case the Respondent has not made any reference to payment of union dues. It has not acknowledged receipt of check off forms.
33. An employer is under obligation by virtue of section 48 of the Labour Relations Act as read with Article 41 of the Constitution of Kenya, to deduct and remit union dues in respect of its employees who have signed the check-off forms. Having conceded that some of its employees are members of the Claimant union, it is obligated to deduct and remit union dues in respect of such employees and remit the same to the Claimant's account specified in the check off forms.
34. On the issue of recognition the Claimant avers that it recruited 56 employees while the 1st Respondent states that

only 27 of the recruited employees are genuine members of the Claimant as 3 names are repeated, 12 are not workers of the Respondent and a further 14 have left employment. The Respondent further states that its employees were 157 in May, 2024, 164 in June, 2024, 173 in July, 2024, 198 in February, 2025 and 219 in March, 2025. The Respondent filed payrolls to back up the numbers it has given.

35. The Claimant questioned the numbers referred to by the Respondent on the basis that the names paying NSSF and NHIF are much less than what the Respondent has made reference to. The Respondent did not comment on this averment or make a clarification.

36. Section 54 of the Labour Relations Act refers to “unionisable” employees. The section provides:

Recognition of trade union by employer.

*54.(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.*

*(2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, **shall recognise** a trade union for the purposes of collective bargaining if the trade union represents a simple majority of **unionisable** employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.*

(3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.

37. "Unionisable employees" refer to employees who are eligible to join the union. An employee who does not pay both NSSF and NHIF would not be eligible to join the membership of the union as it would mean that such employees are not paid a monthly salary. This is because

any employee who is paid a monthly salary is required to pay both NSSF and NHIF (now SHIF)

38. Further, when determining a case on recognition, the relevant date is the date when the union requested to be recognized as that is the date when it informed the employer that it had achieved a simple majority and was eligible and entitled to recognition. This is so because numbers of union members is not static. It is a number that can only be reckoned as at a particular or specific date as both the employer and the union continue to recruit while at the same time some employees continuously leave employment for various reasons.

39. In the instant case the Claimant wrote to the Respondent seeking recognition 22nd March, 2024. The Claimant attached a copy of recognition agreement to the letter. The letter at page 3 of the Claimant's bundle of documents reads:

22/3/2024

Ref No. JML/42/24/07

THE MANAGING DIRECTOR,

JUBILEE MERCHANTS LTD,

*P.O BOX 202,
KAPSABET.*

Dear Sir

REF: RECOGNITION AGREEMENT

*We refer to previous letters to you over the above matter.
Be guided accordingly.*

Be reminded that employees have freedom of expression to exercise their constitutional rights and fundamental activities to participate by joining the union on their wish; therefore we are proposing another meeting for signing the recognition agreement on 25/4/2024 at 11.30am in your promises.

Failure to we shall be forced to take legitimate action for further directions by a copy of this letter we are urging the Nandi County labour officer to intervene.

Be guided accordingly.

Yours faithfully,

Signed

Rodgers Ombati

Brach Secretary

CC

The General Secretary

KUCFAW

P.O Box 46818

Nairobi

The County Labour Officer

Uasin Gishu and Nandi Counties

The Regional Manager

FKE North Rift region

P.C Box 2612

Nakuru

All workers

Jubilee merchants Ltd

P.O Box 202

Kapsabet

40. Based on the foregoing and the documents filed by the Respondent in the witness statement of Immanuel Kipruto Kositany sworn on 28th April, 2025, the Respondent had 141 names on the payroll as at the date the Claimant sought recognition. Of these, 43 were not unionisable as they did not pay NSSF and NHIF. This leaves a balance of 98. Of this number the Claimant recruited 56 out of which 3 names were duplicated leaving only 53 employees.
41. A simple majority of 98 is 50. Therefore 53 constitutes more than a simple majority of 98 as at the time the Claimant sought recognition.

42. At paragraph 8 of the witness statement Mr. Kipruto states that 12 names in the list are not employees of the Respondent. He did not point out who these 12 were. There is therefore no proof that there were 12 names in the check off form who were not employees of the Respondent.
43. The Respondent further states that 14 employees whose names are in the check off form left employment between January and December, 2024. It is not stated the exact dates these employees are alleged to have left employment. Further, no evidence was adduced to show that the 14 employees had left employment as at March, 2024. The said 14 are also not identified.
44. From the foregoing I find that as at the date the Claimant sought recognition by the Respondent on 22nd March, 2024 the Respondent had 98 unionisable employees out of whom the Claimant had recruited 53 members.
45. In conclusion, the court makes orders as follows:
 - a. The Claimant having attained a simple majority of membership of the Respondent's unionisable employees as at the date it sought recognition on 22nd March, 2024,

the Respondent is hereby directed to sign recognition agreement with the Claimant within 30 days.

- b. The Respondent is further ordered to immediately commence deduction and remittance of union dues from its employees who have signed check off forms in accordance with section 48 of the Labour Relations Act.
- c. The Respondent to bear the Claimant's costs of this suit assessed by the court at Kshs. 50,000 as the Claimant cannot have its bill taxed under the Advocates Remuneration Order.

46. Orders accordingly.

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

**M. ONYANGO
JUDGE**