

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT

ELDORET

CAUSE NO. E090 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

**KENYA UNION OF PRINTING, PUBLISHING,
PAPER MANUFACTURERS, PULP AND
PACKAGING INDUSTRIES (KUPRIPUPA)
CLAIMANT**

VERSUS

**THE MAN POWER COMPANY (TCM) 1ST
RESPONDENT**

**PAN AFRICAN PAPER MILLS 2015 LTD 2ND
RESPONDENT**

JUDGMENT

1. The Claimant is a trade union registered under the Labour Relations Act to represent employees in the printing, publishing, paper manufacturing and packaging and related industries sector as more specifically set out in the membership clause of its constitution.
2. The 1st Respondent is a limited liability company engaged in provision of outsourced labour services to companies or entities that require labour. It is stated in the affidavit of it's

Chief Executive Officer, Kirimi Mpungu sworn on 13th December, 2024 that it provides labour to various industries across the Republic of Kenya specifically in the manufacturing and agricultural industries and that it engages the service of over 800 employees.

3. The 2nd Respondent is a corporate body duly registered under the Companies Act of the laws of Kenya and is engaged in manufacturing of paper and paper products.
4. It is the Claimant's case that it has recruited 185 out of 300 employees of the 1st Respondent who work in the 2nd Respondent's premises and has therefore achieved more than 50% majority of the 1st Respondent's employees working in the 2nd Respondent's premises.
5. The Claimant avers that it forwarded to the 1st Respondent check-off forms signed by its employees who have subscribed to the Claimant union's membership. That despite receiving the check-off forms the 1st Respondent has refused and/or declined to acknowledge the employees' membership of the Claimant union. The Claimant further avers that the 1st Respondent has refused and/or declined to deduct and remit

to the Claimant union dues from the wages of the said employees as required by law.

6. The Claimant avers that instead the 1st Respondent started terminating the employment contracts of its employees who had joined membership of the Claimant on account of union membership. The Claimant averred that one of the employees, Ingoi Patrick Anami (Employee No. R8098) who joined the union on 27th September, 2024 was issued with notice of termination of employment only 4 weeks after joining union membership.
7. The Claimant averred that the 1st Respondent's actions of terminating the contracts of union members on account of union membership is intended to frustrate and cause fear among employees and coerce them into withdrawing their membership. That the same is thus a direct violation of the constitutional and labour rights of the employees.
8. The Claimant further avers that the 1st Respondent's refusal to deduct and remit union dues and urgency fees is intended to constrain and frustrate union activities and is an indirect violation of the rights of the employees' rights under the Constitution.

9. The Claimant further averred that every time it recruits employees working in the premises of the 2nd Respondent, it terminates the contracts/agreements for provision of labour and recruits other labour supply agencies. That this is deliberate action to prevent the Claimant from recruiting employees working in the 2nd Respondent's premises and to intimidate employees and prevent them from joining union membership.
10. The Claimant prays for the following remedies against the Respondents:
 - a. A declaration that all the Respondent's employees who have had acknowledged their membership to the Claimant union by signing Check off from members of the Claimant Union.
 - b. An order compelling the Respondent to deduct union dues and/or agency fees from the Claimant's members and remit the same to the Claimant Union's Gazetted Bank Account No. 0941822398 held at Absa Bank PLC, Queens Way Branch, as soon as they are deducted from the Claimant Union's members.

- c. An order compelling the 1st Respondent herein to sign a recognition agreement with the Claimant Union herein.
- d. Costs of this suit.
- e. Any other order and/or relief this Court may deem just and fit to grant.

11. There is no response to Memorandum of Claim by the 1st Respondent on the court record. The 1st Respondent however filed a Replying Affidavit of its Chief Executive Officer, Kirimi Mpungu sworn on 13th December, 2024. In the said affidavit the CEO states that the 1st Respondent entered into a two-year contract with the 2nd Respondent to provide labour from 1st April, 2024 to 31st March, 2026.
12. On the issue of union dues the 1st Respondent states that upon receipt of check-off forms on 9th October, 2024 it verified the same through consent letters issued to its employees to sign for deduction of union dues and a total of 73 employees signed the consents. That it accordingly deducted November, 2024 union dues in respect of the said 73 employees and remitted to the Claimant through bank transfer dated 8th December, 2024.

13. On the redundancy of Ingoi Patrick Anami the 1st Respondent stated that the exercise was not tied to the employee's joining union membership. The 1st Respondent stated that the position was found to be untenable by the 2nd Respondent and that at the time of the termination the 1st Respondent was not aware that the Claimant had recruited its employees.
14. That the notice of intended redundancy was issued on 26th September, 2024 and the letter of redundancy on 25th October, 2024 while the letter from the Claimant forwarding check-off forms dated 7th October, 2024 was received by the 1st Respondent on 9th October, 2024.
15. The 1st Respondent states that restraining it from terminating or dismissing its employees is not in the best interest of the company operating optimally. It states that it is committed to remitting union dues and is not in the habit of harassing employees or curtailing the freedom of employees to join trade unions of their choice as evidenced by the deduction and remittance to the Claimant.
16. It states that no clear case of intimidation has been presented by the Claimant.

17. The 2nd Respondent filed a Response to the Memorandum of Claim dated 20th January, 2025. It avers that it was not aware of the check-off forms referred to in the Memorandum of Claim as it did not receive the same.
18. The 2nd Respondent further avers that there is no existing employer-employee relationship between the 2nd Respondent and Ingoi Patrick Anami and it was not aware of the averments of the Claimant in respect thereof.
19. The 2nd Respondent filed a copy of the outsourcing agreement between it and the 1st Respondent, invoices and payment confirmation relating to the outsourcing contract.
20. The suit was disposed of by way of written submissions. All the parties filed and exchanged submissions, which I have considered. The parties by and large adopted and reiterated the averments in the pleadings and affidavits on record.

Analysis and Determination

21. From the pleadings on record and the submissions filed, the issues that arise for determination in this case are the following: -

- a) Whether the Claimant has satisfied the requirements for recognition and deduction of union dues by the 1st Respondent,
- b) Whether the Claimant has proved that the 2nd Respondent has frustrated union membership by employees working at its premises,
- c) 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

22. 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.

23. Based on the foregoing, 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.

24. In the instant case the 1st Respondent stated it received check off forms from the Claimant on 9th of October, 2024. It was therefore under obligation to deduct and remit union dues from the month of November, 2024. The 1st Respondent attached payment transaction report indicating it sent Kshs. 21,758.05 to the Claimant's account on 6th

December, 2024. This is confirmation that it complied with the provisions of section 48(3) of the Act.

25. The Claimant however avers that it recruited 185 employees while the 1st Respondent states that it deducted and remitted union dues in respect of only 73 employees.

26. It is evident from the check off forms attached to the Affidavit of Kirimi Mpungu that the names in the check-off forms received was in respect of 156 names as follows:

Form 1 - 14

Form 2 - 31

Form 3 - 37

Form 4 - 37

Form 5 - 37

27. No explanation is given by the 1st Respondent why it only remitted union dues for 73 employees yet the forms it received were for 156 employees.

28. The court further notes that the 1st Respondent made the employees sign letters titled RE: REQUEST FOR DEDUCTION FROM MY SALARY. Section 48 does not provide for such as this would imply intimidation of the workers since some may fear openly admitting to the employer that they have joined

union membership for perceived fear of persecution by the employer.

29. The 1st Respondent submitted that at the time of filing the submissions the contract between it and the 2nd Respondent had lapsed and that it no longer had any of the employees in its employment. The 1st Respondent did not submit any evidence of termination of employment for all the employees who were working at the 2nd Respondent's premises.
30. Further, the contract between the 1st and 2nd Respondents filed by both the 1st and 2nd Respondents in court are for a term of two years from 1st April, 2024 to 30th March, 2026. The submissions of the 1st Respondent are dated 31st March, 2025, only one year from date of signing the two-year contract. The term of the contract has therefore not lapsed. There is no proof of termination of the contract adduced by the Respondents. The court therefore finds that the contract is still in force until 30th March, 2026 as indicated in the contract.
31. On recognition of the Claimant, section 54 of the Labour Relations Act 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.

32. The 1st Respondent stated that it has 800 employees and therefore the Claimant has not recruited a simple majority of its employees.
33. The 1st Respondent's CEO in the Replying Affidavit sworn on 13th December, 2024 stated that it provides labour to various industries across the Republic of Kenya specifically in the manufacturing and agricultural industries and that it engages the service of over 800 employees. Obviously it does not expect the Claimant to recruit members from the 1st Respondents employees who do not work within the sector covered by the Claimant.
34. Section 54 is clear that the simple majority referred to therein is in respect of the unionisable employees in the enterprise where the Claimant has recruited members. In this case simple majority refers to the employees working in Pan African Paper Mills 2025 Limited.
35. Based on the Tax Invoices from the 1st Respondent filed by the 2nd Respondent in respect of payments made to the 1st Respondent, the number of employees were as follows:

25/05/2024	293
01/06/2024	291

13/06/2024	148
02/08/2024	223
03/10/2024	228
11/09/2024	216

36. I however note that there is no evidence that the Claimant wrote to the 1st Respondent seeking to be recognized which the 1st Respondent refused as alleged by the Claimant. Recognition is not automatic. A union seeking recognition must write to the employer expressing the desire to be recognized and forwarding a copy of the draft recognition agreement to the employer. The request must propose a time for signing of the recognition agreement and must specify the number of members recruited by the union as at the date of seeking recognition.
37. In the instant case, the Claimant Union has not stated when it sought recognition by the 1st Respondent. It has not adduced any evidence of such request. The court therefore finds that there was no request for recognition by the Claimant to the 1st Respondent which the 1st Respondent refused as alleged by the Claimant. The prayer for recognition must therefore fail.

38. On the issue whether the 1st Respondent terminated the employment contract of Ingoi Patrick Anami on grounds of joining union membership, the Claimant did not controvert the 1st Respondent's averment that at the time of the redundancy of the said Ingoi Patrick Anami the 1st Respondent was not aware that the Claimant had recruited any of its employees into the Claimant Union's membership.
39. I thus find no evidence of termination on account of union membership.
40. Having found as above, the prayer for recognition of the Claimant by the 1st Respondent is dismissed.
41. The prayer for deduction and remittance of union dues shall be deferred pending a report from the County Labour Officer, on the averment of the 1st Respondent that it no longer has any employees working for the 2nd Respondent. As already pointed out by the court, the agreement between the 1st and 2nd Respondents has not lapsed according to the contracts filed in court by both Respondents as the last date thereof is 30th March, 2026.
42. A mention date shall be taken at the time of delivery of this judgment for confirmation of the same.

43. There were no prayers in respect of the 2nd Respondent. no orders are therefore called for against the 2nd Respondent.
44. Each party shall bear its own costs of this suit.
45. Orders accordingly.

**DATED, DELIVERED AND SIGNED
THIS 27TH DAY OF NOVEMBER, 2025.**

**M. ONYANGO
JUDGE**