

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E168 OF 2024**

**KENYA UNION OF ENTERTAINMENT &  
MUSIC INDUSTRY  
EMPLOYEES.....CLAIMANT/APPLICANT**

**VERSUS**

**KENYA CULTURAL CENTRE.  
.....RESPONDENT**

**RULING**

1. What comes up for determination is the Claimant/Applicant’s Notice of Motion dated 30<sup>th</sup> April 2025, by which the following orders are sought:
  - a) *THAT, the Honourable Court do review the judgment delivered on 28<sup>th</sup> day of February, 2025, in terms of deduction and remittance of trade union dues and Agency Fees.*
  - b) *THAT, the Honourable Court do forthwith issue Orders for the remittance of trade union dues being the difference between the supposed 3% and the actual amount remitted at Ksh.600/= that was*

*arbitrarily deducted by the employer from May 2021 up to April 2022 from its 28 employees.*

*c) THAT, the honorable Court direct the Respondent to remit trade union dues in respect of Josephine Kerubo, Victor Nelson Anyola whose alleged letters of resignation contained in the bundle of documents filed by the Respondent are dated 12<sup>th</sup> September, 2022 and 5<sup>th</sup> September, 2022 respectively.*

2. The Notice of Motion is premised on the grounds set out on its face and supported by the Affidavit sworn on 30<sup>th</sup> April 2025 by **Job Mucuha**. The Applicant asserts that there is an error or mistake apparent on the face of the record regarding the deduction of trade union dues, which necessitated specific and direct orders. The Applicant avers that this is consistent with the Respondent's own evidence, namely the alleged letters of employees' resignation from the union some of which are dated September 2022, yet the Respondent ceased deducting union dues from the same employees as early as April, without any justifiable cause.

3. It is further contended by the Applicant that there was an oversight concerning the Respondent's arbitrary deduction of Kshs. 600/=, instead of deducting the prescribed 3% union dues as mandated by the Minister's Order.
4. The Applicant further contends that there is an error or mistake apparent on the face of the record at paragraphs 61 and 62 of the judgment, suggesting that there were no express terms indicating that the CBA would remain binding between the parties beyond 31<sup>st</sup> December 2010. That the last sentence of Clause 21.0 of the CBA expressly provides that, in the absence of notice to review, amend, or modify its terms, the CBA shall remain in force.
5. The Applicant further asserts that there was an error or mistake apparent on the face of the record concerning the procedure for employees' withdrawal from the union. That Section 48(8) is couched in mandatory terms, requiring that "*the employer shall forward a copy of any notice of resignation he receives to the trade union.*"
6. In response to the Notice of Motion, the Respondent filed a Replying Affidavit sworn on 5<sup>th</sup> September 2025 by its Chief Executive Officer, **Michael Pundo**. Mr. Pundo avers that, based on the advice of the Respondent's advocates on

record, the jurisdiction of this Honourable Court to review its own decisions is narrowly circumscribed.

7. He states that the Applicant is deliberately misleading the Court by alleging that it did not receive resignation letters from *Josephine Kerubo, Victor Anyula, Diana Mikari Rubia, Doris Nyaitondi Mogaka, and Odongo Kennedy Leakey*. He contends that this allegation does not disclose any error apparent on the face of the record but is instead an attempt to contradict evidence already presented, evaluated, and addressed by the Court in its judgment.
8. He deposes that the Applicant's own testimony during the *inter partes* hearing confirmed receipt and stamping of resignation letters from 19 employees of the Respondent. Among these were the resignation letters of Josephine Kerubo, Diana Mikari Rubia, and Doris Nyaitondi Mogaka, all dated 28<sup>th</sup> March 2022 and received by the Applicant on 19<sup>th</sup> April 2022. These documents were produced in Court and examined by both sides.
9. Mr. Pundo further asserts that the allegations concerning Victor Anyula and Odongo Kennedy Leakey are equally baseless, as the two individuals were never members of the Applicant union. He notes that this fact was pleaded and

demonstrated through the Respondent's payroll records, which reflected only agency fee deductions for non-union members. In his view, the Court properly considered this material and reached a sound determination.

10. He further asserts that the issues relating to trade union dues and agency fees were fully placed before the Court, canvassed by the parties, and determined conclusively. The Court, he states, rendered a considered judgment based on the evidence and submissions.

11. Mr. Pundo adds that the Gazette Notice in question stipulated that union dues were to be deducted at the rate of 3% of the negotiated wages or Kshs. 600/=, whichever was higher. The evidence presented showed that the Applicant had negotiated maximum wages of Kshs. 12,900 for its members under the CBA in question. Consequently, the Applicant was entitled only to the minimum deduction of Kshs. 600/= per month per member, which the Respondent lawfully deducted and remitted.

12. He contends that the Applicant is attempting to benefit from wage increments that it did not negotiate and to impose obligations on the Respondent that have no basis in law.

13. Mr. Pundo further avers that the Applicant failed to discharge its evidentiary burden of proving that it had 28 members in the Respondent's employment during the relevant period. He notes that its bald assertions, unsupported by documentation, were rejected at trial and cannot now be revived through a review application.



14. He states that, based on legal advice he believes to be sound, the Court reached its findings after evaluating the registered CBA on record. Any dissatisfaction the Applicant may have with that conclusion is a matter for appeal, not review.

15. He maintains that the Respondent was legally entitled to cease deductions upon receiving written notices of withdrawal from the employees concerned. In his view, the Court correctly applied the law, and any disagreement by the Applicant does not amount to an error apparent on the face of the record but reflects mere dissatisfaction with a considered judicial determination.

16. According to Mr. Pundo, the Application dated 30<sup>th</sup> April 2025 is misleading, disingenuous, and opportunistic. He further states that for more than fifteen years, the Applicant made no meaningful effort toward collective bargaining or

the advancement of employee welfare, yet now seeks to unjustly enrich itself by demanding continued deductions without offering any service or engagement to justify them.

17. Mr. Pundo contends that the Applicant's Motion is merely a disguised appeal, a collateral attack on the judgment of this Honourable Court, and amounts to an abuse of the review jurisdiction. He asserts that the Applicant is attempting to pursue a back-door appeal by inviting the Court to sit on appeal over its own judgment.

#### **Submissions**

18. The Motion was canvassed by way of written submissions. Both parties filed written submissions, which the Court has duly considered.

#### **Analysis and Determination**

19. Having considered the Notice of Motion, the Respondent's Replying Affidavit, and the parties' respective submissions, the Court has narrowed the issue for determination to whether the Claimant/Applicant has established sufficient grounds to warrant a review of the judgment delivered on 28<sup>th</sup> February 2025.

20. Rule 74 (1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 (ELRC Rules), delineates the circumstances under which this Court may review its orders or decisions. The permissible grounds are:

- a) discovery of new and important matter or evidence not within the knowledge of the applicant despite due diligence at the time of the original ruling;*
- b) existence of a mistake or error apparent on the face of the record;*
- c) where the judgment or ruling requires clarification; or*
- d) any other sufficient reason.*

21. The Application is grounded on the Applicant's assertions that the Court overlooked the Respondent's arbitrary deduction of Kshs. 600/= instead of the 3% union dues required under the Minister's Order.

22. The Applicant further contends that paragraphs 61 and 62 of the judgment contain an error apparent on the face of the record, as they imply that the CBA did not remain binding beyond 31<sup>st</sup> December 2010, despite Clause 21.0 expressly providing that the CBA continues in force absent notice to review, amend, or modify its terms.

23. The Applicant additionally contends that there was an error apparent on the face of the record regarding the procedure for employees' withdrawal from the union.

24. It is evident that the Court's jurisdiction under Rule 74(1) of this Court's Rules is narrowly circumscribed, thereby limiting the scope of review.

25. Considering the scope of Rule 74(1) of this Court's Rules in light of the Applicant's assertions, it is clear that the grounds advanced neither reveal any error apparent on the face of the record nor fall within the categories contemplated under the Rule to warrant a review.

26. With due respect to the Applicant, the issues raised in the Notice of Motion effectively challenge the merits of the Judgment, which is properly the domain of an appeal. Allowing such a challenge under the guise of review would improperly expand the scope of the review jurisdiction and set an undesirable precedent, enabling parties to reargue matters already decided.

27. On this issue, the Court concurs and is bound by the decision of the Court of Appeal in the case of **National Bank of Kenya Ltd vs Ndungu Njau [1997] eKLR**, where it was held as follows:

*“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.*

*In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been*

*hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it". (Underlined for Emphasis).*

28.The Court reiterates that, in the present case, the Applicant’s dissatisfaction with the findings of the Judgment may constitute grounds for an appeal, but does not amount to a basis for review.

29.All in all, the Court finds that the Applicant has not satisfied the threshold for the grant of review orders under Rule 74(1) of the ELRC Rules.

30.Accordingly, the Application dated 30<sup>th</sup> April 2025 is dismissed, with no orders as to costs.

**DATED, SIGNED and DELIVERED** at **NAIROBI** this **1<sup>st</sup>** day of **December** 2025.

.....  
**STELLA RUTTO**

**JUDGE**

**In the presence of:**

For the Claimant/Applicant      Mr. Mucuha

For the Respondent

Ms. Mutua

Court Assistant

Mohammed

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 had 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.

**STELLA RUTTO**

**JUDGE**