REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

ELRC CAUSE NO. E006 OF 2023

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

VERSUS

DADU HARDWARE LIMITED…… RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the Labour Relations Act and is mandated in its constitution under Rule No. 5 to represent employees in the commercial and food sector.
2. The Respondent is a registered company under the laws of Kenya and engages in business in Kenya.
3. By virtue of the Claimant's Constitution, the employees of the Respondent fall within the purview of the Claimant's membership and as such, the Claimant is the right union to represent the employees of the Respondent in labour matters.
4. The Claimant avers that on various dates between April 2021 and October 2022, the Claimant recruited 15 out of a possible

total of 21 employees of the Respondent which translates to about 72%, far above the 51% simple majority required for recognition of a trade union by the law under section 54(1) of the Labour Relations Act.

5. The Claimant contends that vide a letter dated 19th December 2017, it forwarded to the Respondent check off forms for the Respondent to commence deduction of union dues from the 14 employees who had signed the check off forms., but the Respondent refused comply.

6. The Claimant further states that it recruited more employees of the Respondent and forwarded the check off forms to the Respondent.

7. It is the Claimant's case that the Respondent has since refused, neglected and ignored to deduct and remit the union dues despite being served with the check off forms pursuant to section 48 of the Labour Relations Act.

8. In addition, it is averred that the Respondent resorted to unfair labour practice and made several attempts to transfer its employees to an outsourcing firm through coercion, threats,

intimidation and victimization without following the proper channels laid down by the law.

9. The Claimant asserted that the Respondent's failure to recognize it is unlawful and violates Article 41 of the Constitution.

10. The Claimant in its Statement of Claim dated 21st February 2023 sought the following reliefs from the court: -

    (i) That the Honourable court award in favour of the Claimant Union and order the Order the Respondent to recognize the Claimant Union

    (ii) That the Respondent to deduct and remit union dues

    (iii) That the union due arrears from August 2022, be remitted by the Respondent from their account

    (iv) That parties do engage in Collective Bargaining within 60 days upon signing of the Recognition Agreement.

    (v) This Honourable court grant any other relief as it may deem fit

    (vi) Cost of the suit to be borne by the Respondent.

11. The suit was filed together with an application in which the Claimant sought the following orders:

(i) THAT this Application be certified urgent, the same be heard ex parte in the first instance and service be dispensed with.

(ii) THAT the claim filed herein be certified urgent and be heard on priority basis.

(iii) THAT the Honourable Court do issue orders restraining the Respondent from forcing employees into signing contracts of employment with an outsourcing firm known as RABIUD SERVICES (KENYA) LIMITED or any other outsourced labour offering firm.

(iv) THAT the Honourable Court do issue interim orders restraining the Respondent from victimizing, intimidating, coercing, harassing, disciplining, or terminating the services of the Claimant/Applicant's members whose names appear on the check-off forms on account of their union membership, pending hearing and determination of the main suit.

(v) THAT the Honourable Court do order the Respondent to commence deduction and remittance of union dues to the Claimant's members whose names appear on the check-off forms.

(vi) THAT the Honourable Court do order the Respondent to recognize the Claimant Union for negotiating Collective Bargaining Agreement.

12. The Respondent did not file a defence to the Claim. It however filed a Replying Affidavit to the Claimant’s application dated 21st February 2023. The Replying affidavit was sworn on 23rd March 2023 by Patel Bhavinkumar Manubhai, the Respondent’s director.

13. Mr. Manubhai contends that the Claimant has not attained a simple majority of unionisable employees of the Respondent and that the check off list the Claimant presented to the Respondent contains names of people some of whom are not in the Respondent’s employment. According to the Respondent, only five (5) members in the Claimant’s list are the Respondent’s employees but they are not members of the Claimant.

14. It is the Respondent's further contention that some of the employees in the Claimant's list have since renounced their membership and sworn affidavits marked A(i), (ii), (iii) and (iv) to confirm the same.

15. The Respondent asserted that it was not bound to attend any dispute resolution meetings or pay any statutory deductions whenever the same was due since it has never signed any recognition agreement.

16. In sum, the Respondent contended that the Claimant had not met the threshold of recruitment of members to warrant entering into a recognition agreement with the Respondent.

17. The court was urged to dismiss the Claimant's suit with costs.

18. The suit was disposed of by way of written submissions pursuant to the directions of the court issued on 24th June 2025. The Claimant's submissions are dated 30th September 2025. The Respondent did not file any submissions. On 15th October, 2025 when the suit came up for mention to confirm filing of submissions and for fixing of date for judgment, Ms. Nekesa holding brief for Mr. Oyaro for the Respondent informed the

court that her instructions were that Mr. Oyaro did not intend to file submissions in this matter.

Analysis and Determination

19. From the pleadings and the submissions on record, the issues that fall for this court's determination are: -

    i. Whether the Claimant has demonstrated that it enjoys the support of a simple majority (51%) of the Respondent's employees for purposes of recognition
    ii. Whether the Claimant is entitled to the reliefs sought

Whether the Claimant has demonstrated that it enjoys the support of a simple majority (51%) of the Respondent's employees

20. Section 54(1) of the Labour Relations Act stipulates that a trade union is entitled to recognition by an employer for the purposes of collective bargaining for employees of such employer if the

trade union has recruited a simple majority of the unionisable employees of that employer.

21. It is settled law that a Union seeking recognition must demonstrate that it has recruited a simple majority among unionisable employees. The burden of proof lies with the Claimant to provide credible evidence of membership numbers, including valid check-off forms, to substantiate that it has attained the statutory threshold.

22. In the present case, the Claimant asserts that it recruited 15 out of 21 employees representing approximately 72%, which exceeds the statutory simple majority threshold. In support of this averment, the Claimant filed check-off forms signed by 15 employees of the Respondent evidencing their membership and their consent for union dues to be deducted.

23. The Respondent, on the other hand, contends that only five of the employees listed by the Claimant are in its employment and further alleges that some of the employees have since renounced their membership of the Claimant union. To support this position, the Respondent annexed to its Replying Affidavit several affidavits purportedly sworn by the employees

indicating that they had revoked their membership of the Claimant.

24. I have evaluated the documentary evidence produced by the Parties herein. The Respondent's justification for declining to execute the recognition agreement is premised on the assertion that some of the employees recruited by the Claimant have since renounced their membership.

25. In considering this contention, the Court must examine whether the purported renunciations were voluntary and free from any employer influence. Affidavits filed by individual employees revoking union membership especially when obtained in the midst of an active recognition dispute must be viewed with caution, especially where the union has in the course of the dispute complained about harassment and intimidation of its members to force them to renounce their membership of the union, as in this case. A court order was issued restraining the Respondent from such intimidation.

26. Further, section 48 of the Labour Relations Act provides the mode of revocation of membership by employees. Requiring employees to sign affidavits prepared by the employer to

support its case against the union is further evidence of such intimidation.

27. In the absence of sufficient proof to establish the validity of the alleged renunciation, I find that the check-off forms presented by the Claimant constitute credible evidence that the Claimant achieved the simple majority required for recognition.

28. I therefore find and hold that the Claimant is entitled to recognition by the Respondent for purposes of collective bargaining under section 54 of the Labour relations Act.

Whether the Claimant is entitled to the reliefs sought

29. Having found that the Claimant meets the threshold for recognition under section 54 of the Labour Relations Act, it is entitled to the orders sought.

30. Consequently, I enter judgment for the Claimant against the Respondent and order as follows:

    i. The Respondent be and is hereby ordered to enter into a recognition agreement with the Claimant union within 30 days from the date of judgment.

ii. The Respondent be and is hereby ordered to deduct union dues from the wages of its employees who have signed check-off forms submitted to the Respondent by the Claimant and remit the same to the Claimant’s registered account stated in the check off forms with effect from the December 2025.

iii. The Respondent do pay Claimant's costs for this suit assessed by the court at Kshs. 50,000.

31. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 4TH DAY OF DECEMBER, 2025

MAUREEN ONYANGO
JUDGE