

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

CAUSE NO. E828 OF 2025

**KENYA UNION OF SPECIAL AND PROFESSIONAL
GUARDS.....**

.....CLAIMANT

VERSUS

G4S KENYA LIMITED.....

.....RESPONDENT

RULING

1. Before the Court is the Claimant/Applicant's Notice of Motion application dated 25th August, 2025, brought pursuant to Section 3 and 12 of the Employment and Labour Relations Court Act, Rule 45 of Employment and Labour Relations Court (Procedure) Rules, Section 4, 48, 50(1)(2)(8) & (10) of the Labour Relations Act, 2007, Section 19 of the Employment Act, and Articles 22, 23, 36, 41 and 47 of the Constitution. The Applicant seeks orders **THAT**: -

- a) Spent
- b) This Honourable Court be pleased to grant an interim preservative order preventing and prohibiting the Respondent from the actions of intimidation, harassment, and coercion of Applicant union members.

- c) This Honourable Court be pleased to grant interim orders directing the Respondent to immediately implement the check-off system, deduct and remit to the union designated account, union dues from employees who voluntarily signed Form S, pending hearing and determination of the intended suit.
- d) Pending the hearing and determination of this application and the main suit, an Order be issued, directing the Employer to implement all submitted notices in Form S (check-offs) in line with Section 48(3) of Labour Relations Act.
- e) This Honourable Court be pleased to issue an order compelling the Respondent to immediately and henceforth deduct and remit union dues from the salaries of the Applicant's members as per the notices in Form S (check-offs) submitted and when they become due and in compliance with Section 48(3) of the Labour Relations Act.
- f) This Honourable Court be pleased to issue a temporary injunctive order restraining the Respondent, whether by itself, its agents, servants, or employees, from interfering with the Applicant's rights under the Constitution and the Labour Relations Act, including failure and/or refusal to deduct and remit union dues when they become due, pending the hearing and determination of this Application and the main suit.

- g) The Honourable Court do issue an order directing the Respondent to account for and remit all union dues so far withheld from the effective date of the forwarded notices in Form S (check-offs) to the date of compliance.
- h) Costs of this application be provided for.
2. The application is supported by grounds on its face thereof, and the supporting affidavit and further affidavit of **Samson Omechi Ong'era** sworn on 25th August, 2025, and 22nd September, 2025, respectively.
 3. The Respondent avers that it is a registered trade union under the provisions of the Labour Relations Act, mandated to organize, recruit, and represent unionisable employees engaged within the private security industry, where the Respondent operates.
 4. The Applicant avers that it lawfully recruited unionisable employees of the Respondent, many of whom voluntarily signed Form S authorizing deduction of union dues. It states that it has duly served the Respondent with valid check-off forms for a total of 1,829 employees (1,388 in January 2025 and 441 in August 2025), together with the Ministerial Order on deduction of union dues issued under Section 48(2) of the Labour Relations Act.
 5. It is the Applicant's position that all the notices were properly served and received in compliance with the law. It avers further that despite acknowledging receipt, the

Respondent has persistently failed and refused to deduct and remit union dues, without providing any justification, contrary to Section 48(3) of the Labour Relations Act.

6. It is the Applicant's case that a trade dispute was reported, conciliation undertaken, and the Conciliator recommended that the Respondent comply with the law, but the Respondent has ignored both the recommendation and its statutory obligations.
7. The Applicant further contends that the Respondent's conduct violates employees' constitutional rights to freedom of association and fair labour practices under Articles 36 and 41 of the Constitution, as well as statutory and international labour standards. It avers that the refusal to deduct and remit union dues has hindered the Applicant's lawful functions, caused financial and operational hardship, undermined collective bargaining processes, and exposed the Applicant to irreparable harm.
8. The Applicant states that granting the orders sought is necessary in the interest of justice, equity, industrial harmony, and the rule of law, and to protect the fundamental rights and freedoms of workers.
9. It is the Applicant's position that granting the orders sought will not prejudice the Respondent, as the deduction and remittance of union dues arises from lawful, voluntary instructions by employees who have signed Form S check-off notices. It states further that Compliance with these

orders imposes no financial or economic burden on the Respondent.

10. The Applicant maintains that failure to grant the orders would severely compromise and unlawfully interrupt its ability to represent its members and carry out lawful union activities.
11. The Respondent opposed the application vide a Replying Affidavit sworn by Helgah Kimanani on 22nd September, 2025. It states that it is a private company operating in the private security sector with over 10,100 employees nationwide, approximately 9,000 of whom are security guards.
12. The Respondent states that it has a valid and subsisting recognition agreement with the Kenya National Private Security Workers Union (KNPSWU), which is recognized as the sole union representing all unionisable employees, and which recognition agreement remains in force.
13. The Respondent states that it has negotiated and signed a Collective Bargaining Agreement (CBA) with KNPSWU governing the terms and conditions of service for unionisable employees, who currently enjoy the benefits of the CBA.
14. It avers further that in accordance with Legal Notice No. 139 of 2021, union dues are deducted from members and agency fees from non-members and remitted to KNPSWU

at prescribed monthly rates. It is its case that in January 2025, it received a demand from the Claimant union to remit union dues, accompanied by check-off forms allegedly signed by 1,388 employees, and a further batch, allegedly signed by 441 employees, was received in August 2025, both seeking deduction and remittance of dues to the Claimant union.

15. The Respondent avers that the Applicant submitted check-off forms in January and August 2025, allegedly authorizing the deduction of Kshs.250 per member from the Respondent's employees. The Respondent further states that in January 2025, it received correspondence from the Claimant's advocates forwarding alleged resignation letters from 444 employees purporting to resign from KNPSWU.
16. The Respondent contends that it has not verified the authenticity of the names, signatures, and instructions contained in the check-off forms and resignation letters, noting that verification is necessary given its workforce of approximately 10,100 employees.
17. The Respondent avers that while check-off forms were submitted for 1,388 employees, resignation letters from KNPSWU allegedly cover only 805 individuals, and none were received directly from employees in compliance with Section 48 of the Labour Relations Act.

18. The Respondent argues that implementing the Claimant/Applicant's demands would result in multiple and excessive deductions from employees' wages, potentially exceeding Kshs. 500 per month, which employees' earnings cannot sustain, and would risk double payments and statutory non-compliance.
19. Further, the Respondent maintains that it recognizes KNPSWU as the sole union under an existing Recognition Agreement and CBA, and remitting dues to the Claimant/Applicant would breach those agreements.
20. The Respondent states that the interim orders sought are final in nature, and amount to a mandatory injunction without exceptional circumstances, and would prematurely determine the dispute at an interlocutory stage, thereby violating its right to a fair hearing.
21. It is its contention that the matter raises substantive legal and industrial relations issues requiring a full hearing, including the validity of dual union representation, the effect of existing statutory instruments, and the risk of conflicting obligations.
22. It is the Respondent's position that granting the interim orders would cause it grave prejudice.
23. Under the Applicant's supplementary affidavit, the Applicant states that the Respondent has not disputed that the Applicant union fully complied with all legal and

procedural requirements under Section 48(1), (2), and (3) of the Labour Relations Act, 2007.

24. The Applicant avers that the Respondent has neither pleaded nor provided evidence to justify its deliberate refusal to implement the duly served Form S check-off authorizations, nor shown that such refusal is supported by any existing law governing deduction and remittance of union dues. It avers further that the Respondent has also failed to challenge or act upon the outcome and recommendations of conciliation, effectively disregarding the conciliator's findings.
25. The Applicant states that although the Respondent admits receipt of the Form S notices in January 2025, it has not explained nor documented what prevented implementation within the statutory timeframe, nor did it communicate any reasons to the Applicant, raising concerns of violation of Article 47 of the Constitution on fair administrative action.
26. The Applicant states that employees' representational rights are protected under ILO Convention No. 87, Articles 36 and 41 of the Constitution, and Section 4 of the Labour Relations Act, guaranteeing freedom of association and the right to join a union of choice. She asserts that deduction and remittance of union dues are strictly regulated by Section 48 of the Labour Relations Act and are mandatory upon service of valid Form S notices,

independent of the existence of a recognition agreement or CBA with another union.

27. The Applicant maintains that the Respondent's conduct is riddled with illegality, non-compliance with statutory labour relations mechanisms, and deliberate violation of its union's lawful representational rights.
28. The Applicant states that the Respondent's claim of needing to "verify" employees who signed Form S check-off authorizations has no legal basis, as no such verification mechanism is provided for under Section 48(1), (2), and (3) of the Labour Relations Act, 2007. The Applicant avers that even assuming the verification was permissible, the Respondent has failed to explain why it did not undertake it within the statutory timelines, despite admitting receipt of the first batch of check-off forms in January 2025.
29. The Applicant further states that the Respondent has neither pleaded nor produced evidence showing that the submitted Form S notices include members of another union, rendering claims of double deductions speculative and unfounded.
30. The Applicant maintains that recognition agreements or CBAs cannot bar employees from joining another union, and the Respondent has not identified any exceptional circumstances justifying non-compliance with Section 48(3) of the Labour Relations Act.

31. The Applicant states that the Respondent failed to seek guidance from the Ministry of Labour or the Court if there were genuine doubts about compliance.
32. The Applicant asserts that it has proved its case and that the Court has discretion to grant the orders sought at this stage to halt the Respondent's continued defiance of the law.
33. In conclusion, the Applicant reiterates that deduction and remittance of union dues are clear matters of law governed by Section 48 of the Labour Relations Act, and that it has fully complied with all statutory requirements, recruited more than the minimum number of members, and duly served the check-off notices.
34. The parties' submissions have been duly considered.

Determination

35. The following issues fall for determination: -
 - i. Whether the Applicant has satisfied the statutory requirements for deduction and remittance of union dues or whether the Respondent has lawful justification for failing to implement duly served Form S check-off notices
 - ii. Whether the Applicant deserves the orders sought

Whether the Applicant has satisfied the statutory requirements for deduction and remittance of union dues, or whether the Respondent has a lawful justification for failing to implement duly served Form S check-off notices

36. Section 48(3) of the Labour Relations Act provides thus: -
“An employer... 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...”
37. The Respondent herein admits receipt of the Form S notices in two batches, the first in January 2025 and the second in August 2025. It is also not disputed that the Applicant union had recruited well beyond the statutory minimum of five (5) members from the Respondent’s employment.
38. In ***Kenya Union of Commercial Food & Allied Workers v. Meru North Farmers Sacco Ltd [2014] eKLR***, the Court held:-
“Once a union has complied with Section 48 and served duly signed check-off forms, the employer has no discretion in the matter. Deduction of union dues is a statutory obligation.”
39. Similarly, in ***Banking Insurance & Finance Union (Kenya) v. Postbank Credit Ltd [2015] eKLR***, the

Court held that the existence of another union or recognition agreement does not negate an employee's constitutional right to join a union of choice nor relieve the employer of its statutory duty under Section 48.

40. The Respondent contends that the reason it has not complied with its statutory obligation to deduct and remit union dues, is the need to verify the authenticity of the check-off forms and the fear of double deductions.

41. In my view, this argument has no statutory footing, as Section 48 does not provide for verification by the employer, nor does it suspend the statutory timelines pending such verification. In ***Modern Soap Factory v. Kenya Shoe & Leather Workers Union [2017] eKLR***, the Court rejected a similar argument and stated:-

“An employer cannot invent administrative hurdles not contemplated by statute to defeat employees’ right to union membership.”

42. On the question of possible double deductions, the Court agrees with the Applicant that union dues under Section 48 and agency fees under Section 49 are regulated by law, and mechanisms exist to address any overlap. It therefore follows that mere apprehension unsupported by evidence, cannot override a statutory command.

43. In the upshot, I reach the conclusion that the Applicant has fully complied with Section 48(1), (2) and (3) of the

Labour Relations Act in respect of the deduction of its dues by the Respondent, and the Respondent has not justified its failure to implement the duly signed check-off forms.

Whether the Applicant deserves the orders sought

44. The Respondent's contention is that the interim orders sought are final in nature, and amount to a mandatory injunction without exceptional circumstances, and would in its view, prematurely determine the dispute at an interlocutory stage, thereby violating its right to a fair hearing.
45. It is indeed evident from the Applicant's prayers that some of the orders sought are mandatory in nature as correctly submitted by the Respondent. Courts have, however, time and again, held that mandatory injunctions may issue at an interlocutory stage in clear and exceptional cases. In ***Kenya Airways Ltd v. Aviation & Allied Workers Union Kenya [2014] eKLR***, the court emphasized that where a statutory obligation is clear and continuing, the Court will not shy away from granting mandatory orders at an interlocutory stage.
46. In the instant case, the statutory duty under Section 48(3) is clear; the Respondent has admitted receipt of Form S notices, and has not shown lawful justification for non-compliance. This in my view, is a clear case, warranting this court's intervention at an interlocutory stage.

47. Accordingly, I find and hold that the balance of convenience tilts heavily in favour of the Applicant and in granting the orders sought.

48. In whole, the Applicant's motion succeeds, and I grant the following orders:-

a) That the Respondent shall immediately implement all duly served Form S notices and commence deduction and remittance of union dues to the Claimant/Applicant in accordance with Section 48(3) of the Labour Relations Act.

b) That the Respondent be and is hereby restrained from intimidating, harassing, coercing or interfering with its employees who have joined the Claimant Union.

c) That the Respondent shall account for and remit all union dues withheld from the effective date of service of the Form S notices.

d) That the costs of the application shall be in the cause.

49. It is so ordered.

**SIGNED, DELIVERED, AND DATED AT NAIROBI THIS 18TH
DAY OF DECEMBER, 2025**

**C. N. BAARI
JUDGE**

Appearance:

Mr. Ong'era present for the Claimant/Applicant

Mr. Makori present for the Respondent

Ms. Esther S - Court Assistant

ORIGINAL