



Kenya Engineering Workers Union v Tononoka Rolling Mills Limited (Cause E537 of 2024) [2025] KEELRC 3497 (KLR) (5 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3497 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E537 OF 2024
AK NZEI, J
DECEMBER 5, 2025**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
TONONOKA ROLLING MILLS LIMITED RESPONDENT**

RULING

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 15th July, 2024 and pleaded:-
 - a. that the parties herein have a Recognition Agreement signed as a result of a suit, being Nairobi ELRC Cause No. 1646 of 2016.
 - b. that before signing of the Recognition Agreement, the Claimant had recruited the Respondent's 27 unionisable employees, which was over 90%, and forwarded Form "S" (check-off forms) together with the Minister's Gazette Notice for effecting of deduction of union dues in compliance with Section 48 of the Labour Relations Act 2007.
 - c. that the Respondent stopped deduction of union dues in 2015, forcing the Claimant to report a Trade Dispute pursuant to Section 62 of the Labour Relations Act, following which a Conciliator was appointed.
 - d. that the Conciliator invited the parties for various meetings, without any agreement being reached, prompting the Conciliator to issue a certificate of unresolved dispute pursuant to Section 69 of the Labour Relations Act 2007, with recommendations that the Respondent effects deductions and remittance of union dues, and pays union dues arrears from her pocket/source.



- e. that the last payment of union dues by the Respondent was in August 2015, amounting to Kshs.59,408/= per month, hence the Respondent is in arrears for 100 months, and that based on the same union dues, arrears would be Kshs.59,408 x 100 = Kshs.5,940,800/=.
 - f. that Cotu dues are Kshs.150/= per month for each employee, hence Kshs.150 x 27 x 100.
 - g. that the total arrears of both the Claimant's and Cotu (K) dues is Kshs.9,990,800/=.
 - h. that the Respondent is in violation of Section 48 of the *Labour Relations Act* 2007 and Articles 36, 41 and 47 of *the Constitution* on the freedom of association, fair labour practice and fair administrative action.
2. The Claimant seeks the following reliefs in the main suit:-
- a. An order that the Respondent's action was unfair, unlawful and in bad faith.
 - b. An order [directing] the Respondent to pay all the outstanding arrears of both the Claimant Union dues and Cotu (K) dues with immediate effect at Kshs.9,990,800/=, and continuing accruing at monthly rates of Kshs.102,068/= until Judgment is entered.
 - c. Interest at Court rates from the month when payment was stopped by the Respondent, being August 2015.
 - d. Costs of the suit.

The Application

3. On or about 19th May, 2025, the Respondent filed an urgent Notice of Motion dated 8th May, 2025 seeking the following Orders:-
- a. Spent.
 - b. Spent.
 - c. That the Court be pleased to issue an order staying proceedings herein pending hearing and determination of an application (dated 24th June, 2022) before the National Labour Board seeking Revocation of the Recognition Agreement between the parties herein.
 - d. That costs of the application do abide by the outcome of the suit.
4. The application sets out on its face the grounds upon which it is brought, and is predicated on the supporting affidavit of Elsa Okumu, the Respondent's Human Resource Manager, sworn on 8th May, 2025. It is deponed in the said supporting affidavit:-
- a. that the Respondent/Applicant filed an application dated 24th June, 2022 before the National Labour Board seeking revocation of the Recognition Agreement signed between the parties hereto on account of the Claimant Union not having achieved a membership of 50% + 1 of employees working at the Respondent/Applicant company, required for recognition under Section 54(1) of the *Labour Relations Act*, 2007.
 - b. that the application was heard on 16th December, 2024, and is pending Ruling before the Board.
 - c. that circumstances giving rise to the application for revocation are that vide a letter dated 24th August, 2015, the Claimant herein reported a dispute between itself and the Respondent,



and a Conciliator was appointed vide the Chief Industrial Relations Officer's letter dated 17th September, 2015 pursuant to Section 65(1) of the *Labour Relations Act*, 2007.

- d. that the Conciliator heard the trade dispute and examined employment records and the payroll produced by the Respondent/Applicant; and determined that the Claimant had not met the threshold under the law to be recognized by the Respondent/Applicant herein, and recommended that the Claimant recruits more members that work with the Respondent before seeking recognition.
 - e. that dissatisfied with the Conciliator's findings, the Claimant moved to Court and filed ELRC Cause No. 1646 of 2016, seeking to compel the Respondent/Applicant to sign a Recognition Agreement with it, which suit the Respondent/Applicant's Advocates inadvertently failed to defend, leading to entry of a default Judgment.
 - f. that the Respondent/Applicant's subsequent application to set aside the default Judgment was not successful.
 - g. that in compliance with the Court's Orders, the Respondent signed the impugned Recognition Agreement, but that this did not mean that the Claimant had met the legal requirement of signing a Recognition Agreement with the Respondent herein.
 - h. that the outcome of the pending application for revocation of the Recognition Agreement will significantly influence this Court's decision in the current proceedings. That the Respondent/Applicant has raised objections regarding the Claimant's legal standing and capacity to collect union dues from the Respondent's employees; as well as the Claimant's requisite authority to represent the employees, and therefore its acts.
 - i. that it is necessary to first allow the National Labour Board to first make a determination on the issue of membership of the Respondent's employees in the Claimant Union, as this will determine whether the Claimant has the legitimate authority to represent the Respondent's employees, and particularly in matters concerning collection of union dues.
 - j. that if the Recognition Agreement is revoked, proceedings herein will be rendered an act in futility.
5. Documents annexed to the supporting agreement include a copy of a Recognition Agreement, duly signed by parties to the suit herein.
 6. The application is opposed by the Claimant/Trade Union vide grounds of opposition dated 4th July, 2025. It is stated in the said grounds of opposition:-
 - a. That the application offends Section 48 of the *Labour Relations Act*, 2007 as it is not in any way linked to Section 54 of the said Act on Recognition Agreements.
 - b. That the Recognition Agreement is solely for the purpose of negotiation of Collective Bargaining Agreement (CBA) in line with Section 54 of the *Labour Relations Act*, 2007.
 - c. That the application is res-Judicata as it is the same with the one dated 4th December, 2024.
 - d. That the Respondent/Applicant should bear the costs of the application.
 7. Both parties filed written submissions on the application pursuant to the Court's directions in that regard.



8. It is a common ground that the Claimant Trade Union has membership amongst the Respondent's employees. It is also not disputed that the Claimant and the Respondent signed a Recognition Agreement pursuant to a decree of this Court issued in Nairobi ELRC Cause No. 1646 of 2016, and that the said compelling decree was neither set aside nor successfully appealed. The decree remains in place.
9. It is further a common ground that prior to signing of the Recognition Agreement, the Claimant had recruited members from amongst the Respondent's employees, and that for some time, the Respondent deducted union dues from the said members and remitted the same to the Claimant, before eventually stopping. No valid reason for the stoppage in remittance of union dues has been given by the Respondent/Applicant.
10. The claim herein is for payment of union dues arrears, from the date deductions and remittance of union dues was stopped by the Respondent/Applicant until Judgment is entered herein.
11. Further, although the Respondent/Applicant has demonstrated that it applied to the National Labour Board for revocation of the Recognition Agreement signed between it and the Claimant, and that an invite for a hearing of that application was sent out by the National Labour Board on 13th December, 2024, there is nothing on record to show that the hearing actually proceeded as per the invitation, and that the Board's decision is pending delivery, almost a year down the line.
12. Further, it is to be noted that the law does not link deduction and remittance of union dues to the signing or revocation of a Recognition Agreement. Section 48 of the [Labour Relations Act 2007](#) provides as follows:-

- “(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 the monies deducted –
 - i. into a specified account of the trade union, or
 - ii. in the 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) ...



- (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.”
13. As already stated elsewhere in this Ruling, it is pleaded by the trade union (in the main suit herein) that the Minister issued a Gazette Notice “for the effecting of deduction and remittance of trade union dues in compliance with Section 48 of the Labour Relations Act, 2007.” This averment was not/has not been controverted, and no resignation of any union member has been demonstrated. As already stated in this Ruling, no valid reason has been given for the cessation of deduction and remittance of union dues.
 14. On the other hand, Section 54(1) of the Labour Relations Act provides as follows:-
 - “(1) An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.”
 15. Under Section 54(5) of the said Act:-

“An employer, group of employers or employers’ association may apply to the Board to terminate or revoke a recognition agreement.”
 16. It is clear from the foregoing provisions of the law that deduction and remittance of union dues and signing of and/or revocation/termination of a Recognition Agreement are two different things.
 17. Trade Union dues will lawfully be deducted and remitted by an employer to a trade union if there are more than five (5) employees of the employer who are members of the trade union, and the Minister has issued an order directing the employer to deduct union dues from the wages of the Union’s members.
 18. In the present case, the Minister is not shown to have varied the Order/Gazette Notice on the basis of which Union dues were initially deducted by the Respondent/Applicant (employer) and remitted to the trade union/Claimant. Existence of the Minister’s Order/Gazette Notice has not been disputed by the Respondent/Applicant.
 19. Any proceedings that may be pending before the National Labour Board pursuant to Section 54(5) of the Labour Relations Act, 2007 have no legal bearing on the present suit.
 20. In the upshot, and having considered the written submissions filed by both parties, I find no merit in the Notice of Motion dated 8th May, 2025. The same is hereby dismissed with costs to the Claimant/Respondent. The costs are assessed at Kshs.10,000/=, pursuant to Rule 70(4) of the Employment and Labour Relations Court (Procedure) Rules 2024. The costs shall be paid within 30 days of this Ruling.
 21. The suit shall forthwith be fast-tracked, and shall be set down for trial.
 22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS

5TH DAY OF DECEMBER 2025



AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Okaya for the Claimant

Miss Mutinda for the Respondent

DRAFT

