

REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT  
AT MOMBASA  
CAUSE NO. E048 OF 2024

KENYA CHEMICAL WORKERS UNION.....CLAIMANT

VERSUS

UMOJA SHOE COMPANY LIMITED.....RESPONDENT

**JUDGMENT**

**Background**

1. Via the Memorandum of Claim dated 10<sup>th</sup> June 2024, the Claimant sues the Respondent herein, and seeks the following reliefs;
  - a. Kshs. 425,600/= unremitted union dues as of May 2024.
  - b. An order compelling the Respondents to deduct and remit monthly union dues to the Claimant union from all members of the union in accordance with section 50 of the Labour Relations Act.
  - c. An Order directing the Respondent to pay interest on the cumulative amount of Kshs.425,600/=at court rates.
  - d. That the Court does issue a declaration that the Respondents are in breach of the Claimant's right under

article 41 of the Constitution and the Labour Relations Act.

e. Damages for breach of the Claimant's constitutional rights.

f. Costs of this suit and interest at court rates

2. The Respondent opposed the Claimant's claim in a Statement of Response dated 7th August 2024, asserting that it no longer holds a valid recognition agreement with the Claimant union. It states that many employees who later joined the union either refused salary deductions or resigned from the union, and emphasizes that it cannot legally make deductions without their approval.

3. At the hearing of this matter, the parties adopted their respective witness statements filed herein as their evidence in chief, and produced as exhibits, the documents filed under their respective lists of documents as their documentary evidence.

### **Claimant's case**

4. The Claimant presented two witnesses, George Gwako [CW1] and David Konga [CW2], to testify on its behalf. CW1 testified that he is the National Industrial Relations Officer at the Claimant's.

5. The witness stated that, in collaboration with his colleague, CW2, he initiated a recruitment drive targeting the Respondent's employees in February 2024. By the end of March 2024, they had recruited over 133 of the Respondent's employees into the Claimant union. The recruited members duly signed the check-off forms in accordance with the mandatory provisions of section 48 of the Labour Relations Act. The forms were forwarded to the Respondent to facilitate the deduction and remittance of union dues from the wages of employees who had consented to union membership.
6. The Claimant sustained its recruitment drive, ultimately recruiting a cumulative total of 252 employees of the Respondent company by May 2024.
7. However, despite several submissions of the check-off forms and repeated follow-ups, the Respondent failed, declined, ignored, and refused to deduct and remit the union dues.
8. As a result of the Respondent's refusal, the Claimant reported the dispute to the Cabinet Secretary, Ministry of Labour and Social Protection, under section 62(1) of the Labour Relations Act. A conciliator was appointed, and the parties attended a conciliation meeting on 16th May 2024, but no agreement was reached.

9. The conciliator subsequently issued a certificate of unresolved dispute on 17th May 2024. The Claimant contends that the Respondent's continued refusal to implement the deductions is contrary to sections 48(3) and 50 of the Labour Relations Act and to Article 41 of the Constitution, which protects workers' rights to form, join, and participate in trade union activities.
10. RW2 adopted his witness statement dated 19th August 2024 as his evidence in chief. The evidence is not materially different from that of RW1.
11. Under cross-examination, the witness stated that, as far as he is concerned, the Claimant has 252 members. He isn't aware of any of them having left the employment of the Respondent.
12. None of the Respondent's employees has complained that his salary was deducted for union dues but not remitted to the Union.

### **Respondent's case**

13. The Respondent called one witness to testify on its behalf, Georgette Mjeni, its Human Resource Coordinator. The witness stated that on or about 2<sup>nd</sup> May 1979, the Respondent entered into a recognition agreement and negotiated and signed several collective bargaining

agreements with the Claimant regulating the terms and conditions of the unionisable employees, the last of which was signed on 29<sup>th</sup> August 2006 for the period 1<sup>st</sup> July 2005 to 30<sup>th</sup> June 2007.

14. The Claimant and another union, Kenya Shoe and Leather Workers' Union, had multiple disputes over recognition by the Respondent, which were settled in favour of the Claimant until 28<sup>th</sup> June 2006, when the Minister for Labour released his report to the parties and recommended that both unions' constitutions cover rubber making/manufacturing as undertaken by the Respondent. The report, however, stated that the Kenya Shoe and Leather Workers Union was more specific, covering the manufacture and repair of shoes, among others.
15. The report recommended that the Kenya Shoe and Leather Workers Union be the sole legitimate representative of the industrial interests of the workers at the Respondent company.
16. The report recommended that the Claimant arrange to terminate its recognition agreement with the Respondent, and on expiry of the then active CBA, cease to collectively bargain for the workers. The CBA was valid until 30<sup>th</sup> June 2007, but by August 2006, 77 workers of the Respondent,

constituting 87%, had left the Claimant union for the other union.

17. Consequently, on 4<sup>th</sup> September 2006, the Respondent issued the Claimant a 3 months' notice to rescind the agreement.
18. On 3<sup>rd</sup> May 2007, the Claimant filed a suit in court against the Respondent challenging its decision to rescind the recognition.
19. The Respondent further states that although some employees later joined the Claimant union after the Kenya Shoe and Leather Workers Union collapsed, many of them were unwilling to have union dues deducted and subsequently resigned from the Claimant union.
20. On 13<sup>th</sup> September 2007, the Court made judgment upholding the Minister's decision and ordered that the Respondent and the Kenya Shoe and Leather Workers Union to sign a formal recognition agreement within two [2] months of the date of the judgment.
21. The Court further ordered that the Respondent rescinds forthwith the existing recognition between it and the Claimant.

22. On 16<sup>th</sup> May 2024, the parties attended a conciliation meeting before the County Labour Officer but meeting failed to proceed as the Claimant's representative became aggressive and disruptive. The Conciliator was forced to issue a Certificate of Unresolved dispute.
23. Sometimes later, the Kenya Shoe and Leather Workers Union collapsed, forcing some of the Respondent's employees to join the Claimant union. However, the said employees were reluctant to have their dues deducted from their salaries, and many of them have since resigned from the Claimant union.
24. The witness further stated that all employees are at liberty to be represented by any union of their choice, but under the law, nothing prevents union members from paying any dues, levies, or subscriptions directly to the union.
25. The Respondent has never deducted any of the said dues, and they are therefore not recoverable from the Respondent.
26. Under cross-examination, the witness testified that the Respondent would not make deductions from employees' salaries, first, because it did not have a recognition agreement with the Claimant, and second, that when it attempted to make the deductions, the employees resisted, contending that they had not been properly advised about deductions for union dues.

27. The witness admitted that the Respondent was served with the Check off forms that the Claimant has tendered in evidence in this matter.
28. The Respondent has no documentary evidence that the employees complained about the deductions. However, it has tendered evidence to demonstrate that 40 of the Respondent's employees withdrew their membership from the Claimant union. The Respondent did not write to the Claimant to bring to its attention that its members had complained about and resisted the deduction.
29. Currently, the Respondent employs two hundred employees who are members of the Claimant union. The Respondent has not deducted any union dues from these two hundred employees.
30. The Judgment in the matter mentioned hereinabove bars the Respondent from making deductions in favour of the Claimant and from entering into a recognition agreement with them. In the absence of a collective bargaining agreement, it is not possible to make the deductions.

### **Claimant's submissions**

31. The Claimant argues that, under section 48 of the Labour Relations Act and the Kenya Chemical Workers Union

(Deduction of Trade Union Dues) Order (Legal Notice No. 6 of 2022), the Respondent was under a statutory obligation to commence deductions within thirty days of being served with the check-off forms.

32. It further relies on Articles 36 and 41 of the Constitution and sections 4 and 5 of the Labour Relations Act to assert employees' right to freedom of association and protection from employer interference. The Claimant maintains that the Respondent admitted receiving the check-off forms but deliberately declined to make the deductions, thereby breaching both statutory and constitutional obligations.
33. The Claimant submits that the Respondent's assertion that some employees resigned from the union is unfounded. It has not produced any resignation documents before the Court to substantiate this. Furthermore, if any withdrawals were made by its members, they were induced by coercion. The law requires voluntary, written resignations, and any employer-induced withdrawals are invalid.
34. The Claimant submits that in the circumstances of this matter, and the evidence presented before this court, it is entitled to all the reliefs sought.
35. In support of its position, the Claimant relies on the following cases; **Banking, Insurance & Finance Union (Kenya) v Maisha Bora Sacco Society Limited, Nairobi Cause No.**

**1776 of 2014; Royal Court Hotel Limited v Minister for Labour & another [2018] KECA 829 (KLR), Civil Appeal No. 98 of 2015; Krystalline Salt Limited v Kenya Chemical Workers Union [2024] KECA 573 (KLR), Civil Appeal E079 of 2022; and Kenya Chemical Workers Union v Macs Pharmaceuticals Limited, Nairobi ELRC Cause No. E912 of 2023.** The Claimant submits that these decisions affirm the employer's duty to deduct and remit union dues and the employer's burden of proving alleged withdrawals, and therefore urges the Court to grant the reliefs sought in the claim.

### **Respondent's submissions**

36. The Respondent identifies three issues for determination in this, namely, whether the Respondent is under any obligation to deduct and remit union dues to the Claimant, whether the Respondent violated any provisions of the Labour Relations Act or the Constitution of Kenya, and whether the Claimant is entitled to the reliefs sought.
37. On the first issue, the Respondent submits that it isn't bound to deduct and remit union dues, as the recognition agreement between it and the Claimant was lawfully terminated pursuant to the Minister's directive and the Court's judgment mentioned hereinabove.

38. It is further submitted that, under Section 4[1] of the Labour Relations Act, employees have the right to leave a trade union. Consequently, the resignation notices filed by the Respondent conclusively demonstrate that employees voluntarily disassociated themselves from the Claimant.
39. Section 48[6] of the Labour Relations Act prohibits an employer from making any deductions from an employee who has notified the employer in writing of the employee's resignation from a union. Accordingly, the Claimant's insistence on receiving deductions from all originally subscribed employees without considering the resignation would be akin to compelling the Respondent to commit an illegality.
40. It is further submitted that, even if the Respondent were willing to deduct and remit dues, this would be impossible without a reconciled and verified list of bona fide members of the Claimant's union employed by the Respondent. To proceed without the reconciliation and verification, the Respondent shall be exposed to the risk of committing an illegality.
41. The Respondent argues that in all its actions, it hasn't violated any constitutional provision. It respects and upholds the provisions of Article 41 of the Constitution, which affirm employees' inalienable right to join a union of their choice. However, it should not be forgotten that Section 4[1][1][c]

confirms employees' right to leave a trade union. It respected the right of the employees who had left the union.

42. The Respondent also relies on Section 52 of the Labour Relations Act, which permits employees to pay union dues directly to a trade union. It cites **Julia Mwenje Nyinkuri v Kenya County Government Workers Union [2021] KEELRC 1492 (KLR)**, where the court confirmed that employees have the right to join any union of their choice and pay dues directly to it.
43. As to the remedies sought, the Respondent submits that the Claimant has not demonstrated any existing legal relationship that would justify the deduction of dues, and that the 2007 judgment extinguished any prior obligations. It also argues that the Claimant's assertion that employees remain members is contradicted by the resignation notices, and that the conduct of the Claimant's representative during conciliation undermines the Claimant's credibility.
44. The Respondent challenges the claim for Kshs. 425,600, arguing that it is ambiguous because it does not identify valid members in light of the resignations, does not specify the relevant periods, and does not provide a breakdown of the amounts claimed. In this regard, it relies on **Kenya National Union of Nurses v Kenyatta National Hospital Board & 21 others [2018] KEELRC 1948 (KLR)**, in which

the court dismissed a similar ambiguous claim for union dues.

45. In conclusion, the Respondent urges the Court to find that it has complied with the law, that it is under no obligation to deduct and remit union dues to the Claimant, and that the Claimant is not entitled to the reliefs sought. It therefore prays that the suit be dismissed with costs.

### **Analysis and determination**

46. I have carefully considered the pleadings, the evidence, and the submissions by the parties herein, and the following issues emerge for determination;

- a) Whether the Respondent is legally bound to deduct union dues from the salaries of any of its unionisable employees and remit the same to the Claimant.
- b) Whether the Claimant is entitled to the reliefs sought.

47. There is no doubt, and the Respondent's witness admitted, that in 2024 the Claimant embarked on a vigorous member recruitment drive among the Respondent's employees. The drive ultimately yielded 252 members. Further, it isn't in dispute that all those recruited executed check-off forms, which were remitted to the Respondent.

48. Section 48[3] of the Labour Relations Act provides,

***“An employer in respect of whom the Minister has issued an order under subsection [2] shall***

***commence deducting trade union dues from an employee's wages within 30 days of the trade union serving a notice in Form S set out in the third Schedule, signed by the employee in respect of whom the employer is required to make a deduction."***

49. The Respondent does not dispute that it was duly served with the Minister's order or with the notice contemplated under the above stated provision. Its contention is that it could not lawfully deduct and remit union dues in the absence of a recognition agreement. That argument is fundamentally flawed.
50. The obligation to deduct and remit union dues is not conditional upon the existence of a recognition agreement. The statute imposes that duty unequivocally. Had the legislature intended to make the deduction contingent upon a recognition agreement, it would have said so expressly and in clear terms.
51. The provision is plain and admits of no ambiguity; once the order and the requisite notice are received, the employer has no discretion in the matter. The duty to commence deduction is mandatory and immediate within 30 days. The Respondent cannot evade this statutory obligation by

invoking the procedure or mechanisms provided under section 52 of the Act. Those provisions do not suspend, qualify, or override the clear duty imposed.

52. In short, the respondent's position is legally untenable. The law leaves no room for the interpretation the respondent advances.

53. It is important to note at this juncture that recognition agreements are for collective bargaining and are thus tied to collective bargaining agreements, not to the deduction and remittance of union dues.

54. The Respondent advanced a further reason, namely that the Claimant's members had resigned from their membership. It would therefore not be lawful for the Respondent to deduct union dues from employees who had resigned. If the Respondent were to do so, it would be committing an illegality. This court hasn't lost sight of the evidence of the Respondent's witness under cross-examination. She admitted that the Claimant has 200 active members in the Respondent's employment. The Respondent didn't give any reason why deductions could not be made in respect of them.

55. In sum, the answer to this first issue is in the affirmative.

56. I now turn to the 2<sup>nd</sup> issue, of whether the Claimant is entitled to the reliefs sought. The Claimant prayed for Kshs. 425,600, terming the amount unremitted union dues. There was no evidence at all on how this figure was arrived at. The figure was just thrown to the court. The relief is one that this Court cannot award.
57. Any employer who deliberately refuses or fails to deduct and remit union dues, in direct contravention of its statutory obligation under section 48[3] of the Act, acts unlawfully. Such conduct is not a mere technical breach; it strikes at the very foundation of collective bargaining.
58. The deduction and remittance of union dues sustain the functioning and independence of trade unions. By obstructing that process, the employer undermines the system of collective representation established by law. In doing so, the employer infringes the constitutional guarantee of fair labour practices enshrined in Article 41 of the Constitution. The right to fair labour practices necessarily includes the right of workers to organise and participate effectively in trade union activities -rights that cannot be realised where employers deliberately frustrate the statutory mechanisms designed to give them effect.
59. I find that the Respondent, by its conduct, was in breach of the constitutional guarantee of fair labour practices, for the

sake of mutual coexistence between the Respondent and the Claimant, as should ordinarily be expected. I decline to grant general damages for the breach.

60. In the upshot, Judgment is hereby entered in favour of the Claimant in the following terms;

- a) The Respondent shall, with effect from 30<sup>th</sup> March 2026, deduct union dues from the salaries of those employees who have executed check off forms, and remit the same to the Claimant monthly thereafter.
- b) For clarity purposes, the order in [a] above shall apply only to those employees who, after signing the check-off forms, have neither resigned from the union in the manner set out in section 48[6] of the Labour Relations Act, 2007 nor ceased being employees of the Respondent.
- c) Costs of this suit.

**Read Signed and Delivered this 19<sup>th</sup> Day of February 2026.**

**OCHARO KEBIRA**  
**JUDGE**