

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**

**ELRC CAUSE NO E547 OF 2023**

**KENYA SHOE AND LEATHER WORKERS UNION...**  
**.....CLAIMANT**

**VERSUS**

**TECHNOPLAST LTD.....**  
**RESPONDENT**

**JUDGMENT**

**Background**

1. The Claimant is a trade union registered and having its operations in the Republic of Kenya. It represents unionisable employees in the Shoe and Leather sector. On the other hand, the Respondent is a limited liability company registered in Kenya.
2. The Claimant contends that in 2019, it recruited members from the Respondent's workforce. It avers that the recruited employees signed check-off forms to confirm their trade union membership and also to authorize the Respondent to deduct union dues from them and remit the same to the Claimant.
3. The Claimant avers that it forwarded the check-off forms to the Respondent but the Respondent declined to act on the forms. It contends that the Respondent alleged that most of

the employees on the forms were casuals which made it difficult for it to deduct union dues from them.

4. The Claimant contends that the Respondent offered to pay Ksh. 30,000.00 per month on behalf of the casual employees in a bid to overcome the challenge of collecting union dues from them. The Claimant avers that it accepted the proposal where-upon the parties entered into an agreement to operationalize the payments.
5. The Claimant avers that the agreement was concluded in the presence of the Respondent's director and Finance Controller. It contends that upon the agreement being concluded, the Respondent commenced remittance of the agreed amount.
6. The Claimant avers that sometime in 2021, some of the Respondent's casual employees expressed concern about having worked for the Respondent for more than one year without their contracts being formalized. It contends that the employees also expressed their desire to join it (the Claimant).
7. The Claimant avers that following this request, it allowed the employees to take up membership by signing the requisite check-off forms. The Claimant contends that although it forwarded the forms to the Respondent, the latter once again refused to act on the instructions.
8. The Claimant avers that when the Respondent refused to act on the instructions in the check-off forms, it (the Claimant)

reported a trade dispute to the Ministry of Labour and Social Protection whereupon a conciliator was appointed to resolve the dispute. The Claimant asserts that the parties subsequently resolved the dispute where-upon the conciliator issued them with a certificate of agreement dated 27<sup>th</sup> April 2022.

9. The Claimant contends that on 30<sup>th</sup> May 2022, the Respondent wrote to it alleging that it had made erroneous payments of up to Ksh. 1,680,000.00 to it. The Claimant contends that in April 2023, the Respondent began to deduct and withhold Ksh. 30,000.00 per month from its (the Claimant's) trade union dues alleging that this was to recover the amount of Ksh. 1,680,000.00.
10. The Claimant contests the Respondent's decision. It contends that the aforesaid sum of Ksh. 1,680,000.00 was paid to it by the Respondent based on an agreement between the parties. In the premises, it contends that the Respondent's actions are in breach of the Collective Bargaining Agreement between them.
11. The Claimant thus prays for: a declaration that the withholding of the sum of Ksh. 30,000.00 per month by the Respondent is unfair and unlawful; a declaration that all employees of the Respondent who have signed check-off forms with it (the Claimant) are its bona-fide members; an order compelling the Respondent to remit all pending and or withheld union dues and or agency fees deducted from the

Claimant's members to the Claimant's gazetted account as per the Collective Bargaining Agreement; an order compelling the Respondent to remit union dues and or agency fees to the Claimant's gazetted account as soon as the amounts are deducted from the Claimant's members; interest on the outstanding union dues; punitive damages; costs of the suit; and any other relief which the court may deem fit and just to grant.

12. The Respondent has opposed the claim. In addition, it has lodged a counter-claim for the amount of Ksh. 1,648,800.00.
13. The Respondent confirms that the Claimant presented it with check-off forms for some of its employees. It contends that it did not refuse to implement the instructions in the forms. However, it contends that the Claimant had included names of casual employees in the list, a matter which made it difficult to implement the check-off.
14. The Respondent avers that only employees on regular basic salary can be subjected to union deductions through check-off as contemplated under *the Labour Relations Act*. It denies that this extends to casual employees who are not on regular salary.
15. The Respondent denies that the parties to the action entered into a formal agreement under which it was to pay the Claimant Ksh. 30,000.00 per month to cover union dues for casual employees. It contends that the Claimant only convinced members of the Respondent's management at the

time that it was better to pay the amount over and above the regular trade union dues for the benefit of employees who were serving on casual terms.

16. The Respondent avers that casual employees are engaged on need basis. As such, it contends that it is not possible to effect union deductions from them.
17. The Respondent avers that although it continued to make monthly payments of Ksh. 30,000.00 to the Claimant on behalf of the casuals, it was impossible to recover the amount from them. As such, it contends that it became apparent that it was incurring losses as a result.
18. The Respondent avers that following this realization, it decided to stop the remittances to the Claimant as they were erroneous. It contends that it also resolved to recover the sum which it had paid to the Claimant under the arrangement. It further avers that it wrote to the Claimant on 30<sup>th</sup> May 2022 to inform it of the aforesaid resolve.
19. The Respondent contends that the Claimant was expected to make a proposal on how it was going to refund the amount that had been erroneously paid to it. However, it (the Respondent) avers that the Claimant did not do so. As a result, it (the Respondent) contends that it decided to commence the recovery process by withholding Ksh. 30,000.00 per month from the union dues that were to be paid to the Claimant.

20. The Respondent avers that it erroneously remitted the 1,648,800.00 to the Claimant between September 2017 and May 2023. As such, it has counter-claimed for the amount together with interest.

**Issues for Determination**

21. After studying the pleadings, evidence and submissions by the parties, the following issues arise for determination:-
- a) Whether there was a valid agreement between the parties that the Respondent remits to the Claimant Ksh. 30,000.00 per month as union dues for casual employees.
  - b) If the answer to the above question is in the affirmative, whether the agreement remains valid and enforceable to date.
  - c) Whether the Respondent is entitled to recover from the Claimant the sum of Ksh. 1,648,800.00 paid under the arrangement.
  - d) Who is to bear costs of the suit?

**Analysis**

22. During trial, both parties alluded to the fact that there was an initial arrangement between them pursuant to which the Respondent was to remit to the Claimant the sum of Ksh. 30,000.00 per month as trade union dues on behalf of its casual employees. According to the Claimant, the Respondent offered to make these payments because of the challenges of collecting the dues from the casual employees.

The Claimant avers that it was agreeable to the proposal and hence the arrangement.

23. Although the Respondent admits to the arrangement, it contends that it was erroneous. As such, it implies that the arrangement was a nullity and hence the attempts to recover what it paid to the Claimant.
24. The evidence on record supports that fact that the parties indeed had an agreement for the Respondent to pay the Claimant Ksh. 30,000.00 over and above the monthly trade union dues that were collected from long-term employees. According to the evidence, this sum was to cover union dues for casual employees.
25. The fact that the parties had this arrangement is discernible from the Respondent's letter to the Claimant dated 29<sup>th</sup> October 2019. It is also apparent from the Respondent's Memorandum of Response to the conciliator who was appointed by the Ministry of Labour and Social Protection to adjudicate on the dispute between the parties dated 5<sup>th</sup> April 2022. As such, the court finds that there was an agreement between the parties to make these payments.
26. The Respondent contends that the arrangement was erroneous. It relies on the fact that the law requires union dues to be deducted from an employee's pay to contend that the Respondent mistakenly agreed to make payments on behalf of casual employees from its own resources.

27. It is true that union dues ought to be deducted from the salary of the employee who is a member of the trade union to which the money is to be remitted. The same requirement applies to agency fees.
28. However, the fact that the money is meant to be deducted from the beneficiary employees does not mean that the social partners cannot enter into an arrangement through which the money will be sourced from elsewhere. As such, although the employer has no obligation to make union remittances on behalf of beneficiary employees from his own resources, it is not unlawful for him (the employer) to take up this burden.
29. Consequently although the Respondent was under no obligation to make the impugned payments on behalf of its casual employees, there was nothing unlawful about it (the Respondent) agreeing to make the payments. As such, when it (the Respondent) made a proposal to the Claimant that it will foot the expense directly from its resources and the Claimant accepted the proposal, the parties entered into an enforceable agreement. As such, there was a valid agreement between the parties pursuant to which the Respondent made the impugned payments to the Claimant.
30. The next issue for determination is whether that agreement is still enforceable. According to the evidence on record, the Respondent sought to pull out of the aforesaid arrangement when the Claimant demanded for collection and remittance

of union dues from casual employees in addition to the standard remittance of Ksh. 30,000.00. This reality is self-evident from the Respondent's letter to the Claimant dated 29<sup>th</sup> October 2019 and the Respondent's Memorandum of Response to the conciliator dated 5<sup>th</sup> April 2022.

31. As a result of the change of position by the Claimant, the Respondent requested the conciliator to direct it (the Claimant) to refund the sums it had been paid under the impugned arrangement. After striking an agreement between the parties, the conciliator issued a Certificate of Agreement which indicates that the dispute between them was resolved on, inter alia, the following terms:-
  - a) That the deduction of union dues and agency fees from casuals whose services are not continuous was not attainable or practical.
  - b) That the management, in its own discretion, was to consider upgrading employees who had worked for long by converting their contracts and subjecting them to union deductions if they joined the Claimant.
32. The net effect of the foregoing is that the parties agreed during the conciliation proceedings that the impugned agreement under which the Respondent was remitting to the Claimant a standard Ksh. 30,000.00 to cover union dues for casual employees was no-longer sustainable as it had become difficult to implement. This realization by the parties was premised on the fact that it was not possible for the

Respondent to recover the amount paid to the Claimant under the arrangement from the casual employees because of the nature of their engagement. Consequently, and by this agreement, the parties agreed to nullify the aforesaid arrangement with the consequence that it ceased to be enforceable from 27<sup>th</sup> April 2022 when the conciliator recorded the agreement between them. As such, the Claimant cannot seek to enforce the arrangement beyond 27<sup>th</sup> April 2022.

33. The next question for determination is whether the Respondent is entitled to recover the sum of Ksh. 1,648,800.00 which it contends it paid under the arrangement. As noted earlier, the arrangement was voluntarily entered into between the parties. As such, it remained valid and enforceable until the parties nullified it through the agreement they recorded before the conciliator on 27<sup>th</sup> April 2022.
34. The net effect is that the payments which the Respondent had made to the Claimant under the impugned agreement before the parties nullified it on 27<sup>th</sup> April 2022 were validly paid to the Claimant. As such, the Respondent is not entitled to recover the money.
35. The evidence on record shows that the Respondent purported to recover the impugned funds by withholding Ksh. 30,000.00 per month from union dues which were due to the Claimant. During the oral testimony of the defense

witness, he stated that by the time the Claimant moved to court, the Respondent had recovered from the Claimant ten equal instalments.

36. The Respondent's unilateral decision to recover the impugned funds from the Claimant was irregular because at the time the money was paid out to the Claimant, the parties had a subsisting arrangement under which the Respondent was to make a standard remittance of Ksh. 30,000.00 on behalf of casual employees. The Respondent says it sought to recover the funds because it was unable to recover the money from the casuals. However, this was a bare assertion which was not supported by cogent evidence.
37. The Respondent was not entitled to unilaterally deduct the impugned amount from union dues which were payable to the Claimant without the benefit of a court order. This is more so because the payments were made to the Claimant pursuant to a subsisting voluntary arrangement between the parties.
38. As such, the Respondent is obligated to reimburse the Claimant the union dues it irregularly deducted from it (the Claimant) on this account. Accordingly, the court orders the Respondent to remit to the Claimant the aforesaid withheld union dues.
39. That said, the moment the parties agreed before the conciliator that the continued implementation of the agreement under which the Respondent was paying the

Claimant union dues on behalf of casual employees was not sustainable, the obligation on the Respondent to continue remitting the dues on behalf of these lot of employees ceased. As such, the Respondent is not obligated to remit union dues on behalf of casual employees with effect from 27<sup>th</sup> April 2022. It is so declared.

**Determination**

40. The upshot is that the court makes the following findings and consequential orders:-
- a) The parties had a valid agreement under which the Respondent remitted to the Claimant union dues on behalf of its (the Respondent's) casual employees who were the Claimant's members.
  - b) As such, the monthly payments of Ksh. 30,000.00 which the Respondent made to the Claimant under the arrangement were valid.
  - c) The Respondent is thus not entitled to recover the payments it made to the Claimant under the arrangement.
  - d) As such, the Respondent is obligated and is hereby ordered to reimburse the Claimant the money it irregularly deducted from latter's union dues in purported recovery of the impugned amount.
  - e) The arrangement between the Claimant and the Respondent for the Respondent to remit to the Claimant Ksh. 30,000.00 on behalf of the Respondent's causal

employees was nullified on 27<sup>th</sup> April 2022 when the parties agreed before the conciliator that it (the arrangement) was unsustainable.

- f) As such, the Respondent's obligation to remit to the Claimant the sum of Ksh. 30,000.00 on behalf of the casual employees ceased from this date (27<sup>th</sup> April 2022) with the consequence that the Respondent is no longer bound to continue paying this amount to the Claimant.
- g) The Claimant is at liberty to collect union dues and agency fees from the Respondent's casual employees who are its (the Claimant's) members directly in terms of section 52 of *the Labour Relations Act*.
- h) In view of the circumstances which led to this dispute, the court declines to grant the Claimant's request for interest.
- i) Having regard to the fact that the amount of Ksh. 30,000.00 which the Respondent paid to the Claimant was legitimately paid until 27<sup>th</sup> April 2022, the Respondent is not entitled to recover this sum with the consequence that the counter-claim for the amount fails.
- j) Each party to bear own costs of the suit and counter-claim.
- k) Any other order which was sought but has not been expressly granted is deemed to have been declined.

**Dated, signed and delivered on the 26<sup>th</sup> day of February,  
2026**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

.....for the Claimant

.....for the Respondent

**ORDER**

**In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**B. O. M MANANI**