



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

(ON Makau J on 3rd March, 2026)

ELRC CAUSE NO. E846 OF 2025

**BANKING INSURANCE AND FINANCE UNION
(K).....CLAIMANT**

-VERSUS-

**HOUSING FINANCE COMPANY LIMITED.....1ST
RESPONDENT**

**KENYA BANKERS ASSOCIATION.....2ND
RESPONDENT**

JUDGMENT

Introduction

1. The Claimant is a trade union duly registered under the Labour Relations Act, 2007, to represent unionisable employees in the financial sector. The 1st Respondent, is a financial institution registered under the Banking Act, while the 2nd Respondent is an employers' association registered under the Labour Relations Act, 2007.

2. By a Memorandum of Claim dated 4th September 2025, the Claimant alleged that the 1st Respondent had refused and/or failed to deduct and remit trade union dues for its sixty-five (65) members. It further alleged that the 1st respondent had failed to deduct and remit agency fees for unionisable employees covered by the Collective Bargaining Agreement (CBA) concluded between the claimant and the 2nd respondent. Therefore the Claimant prayed for the following orders:-

a) That the Honourable Court to order the 1st Respondent to deduct and remit trade union dues to the Claimant for the sixty-five (65) members

and from any other future members as per the check-off forms and Legal Notice Number 169 of 2024.

b) That the 1st Respondent and the 2nd Respondent jointly and severally do provide to the Claimant with a proper record of all the unionisable employees in their service within seven (7) days from the date of judgment.

c) That the 1st Respondent be directed to use the list so provided to effect deduction and remittance of agency fees as per Legal Notice No. 168 of 2024 and to continue to do the remittances on monthly basis as required by law.

d) Any other reliefs or directions the court may deem fit and justifiable to grant.

e) That the 1st Respondent do pay the costs of the claim to the Claimant.

3. The 1st Respondent filed a Statement of Defence dated 15th October 2025, denying any contractual or legal nexus with the Claimant in respect of the matters pleaded. The 2nd

Respondent did not file any Response to the Claim therefore the suit proceeded between the Claimant and the 1st Respondent.

4. On 22nd October 2025, the parties agreed to dispense with oral hearing of the suit and instead relied on the respective witness statements and documents filed. Subsequently the Claimant filed written submissions dated 4th November 2025, and the 1st Respondent filed submissions dated 11th November 2025.

Evidence

5. The Claimant relied on the averments in the Statement of Claim and the Witness Statement of Tom O. Odero and a bundle of 7 documents in the list dated 4th August 2025. In brief, the Claimant's case was that it has a valid Recognition Agreement (memorandum of agreement) signed with the 2nd Respondent on 4th October 2000. The agreement covers the

1st Respondent since it is a member of the 2nd Respondent employers' association.

6. The Claimant further contended that arising from the said Recognition Agreement, the parties have entered into several collective bargaining agreements including the one for the period 1st March 2023 to 28th February 2025, which still in force.

7. The Claimant states that it recruited sixty-five (65) unionisable workers from the 1st Respondent's staff as its members, and served 1st respondent with check-off forms (Form-S) on 30th April 2025, 9th May 2025, 26th June 2025 and 31st July 2025. The said check-off forms, were duly signed by the employees who were recruited as members. It further served the 1st Respondent with the copy of the Gazette Notice Number 169 of 2024 (order by the minister) to effect the trade union dues deductions, but the Respondent failed and/or refused to do so.

8. The Claimant also proposed several meetings, and the parties met on 27th August 2025. At that meeting, the 1st Respondent allegedly agreed to effect deduction and remittances of the trade union dues by 10th September 2025. However, the Human Resources staff visited all the branches of the 1st respondent on 26th August 2025 directing the union members to resign from the union with immediate effect. As at 4th September 2025, the Claimant had received twenty (20) revocations or resignations from members recruited, which the Claimant contends is a clear indication that the union members are being intimidated and harassed.

9. Regarding agency fees, the Claimant relied on Kenya Gazette Notice No. 168 of 18th November 2024, which provides for deduction and remittance of agency fees at the rate of 1% of the basic salary subject to a minimum of Kshs. 250 and a maximum of Kshs. 1,500 of each unionisable employee of the bank, and remittance to the Claimant's account. The Claimant contended that other members of the

Kenya Bankers Association (KBA), such as Prime Bank and Guardian Bank, have complied with deduction and remittance of agency fees.

10. The Claimant submits that Article 2 of the Constitution domesticates ILO Convention 87 on Freedom of Association and Protection of the Right to Organize and Convention 98 on the Right to Organize and Bargain Collectively. Further, Articles 22, 36, and 41 of the Constitution enshrine the right to freedom of association and every worker's right to form, join, and participate in the activities and programmes of a trade union.
11. The 1st Respondent relied on a Witness Statement dated 15th October 2025 signed by its Human Resource Director, Catherine Olaka, who confirmed that the 1st Respondent is a member of the 2nd Respondent, which serves as an industry association to standardize management practices across the industry. She further confirmed that sometime in April 2025, the Claimant reported having recruited sixty-five (65)

unionisable employees of the 1st Respondent into its membership.

12. She confirmed that the 1st Respondent received a letter dated 30th April 2025 from the Claimant, notifying it of the alleged recruitment and enclosing a list of the recruited members from its employees and a document titled "Notice of Employees Authorizing Deductions" (check-off forms), authorizing deduction of union dues from the wages of the said employees.

13. She further stated that, on 27th September 2024, the 1st Respondent was served with a Memorandum of Claim by the Claimant who had referred a dispute to the Cabinet Secretary, Ministry of Labour and Social Protection for conciliation. The dispute cited was the alleged failure by the Respondent to deduct and remit union dues and agency fees.

14. She confirmed that on 4th February 2025, the conciliator, Mr. K. O. Kasyoki, invited all parties to attend a conciliation meeting scheduled for 18th February 2025. She further confirmed the 1st Respondent, by a letter dated 26th August 2024, responded to the allegations made by the Claimant clarifying that union representatives are permitted access to the Bank's premises and employees strictly outside working hours. The letter also stated that the Bank is not a party to the Collective Bargaining Agreement concluded between the KBA and the Claimant.

15. She contended that a number of the Respondent's employees who had initially been enlisted as members of the Claimant union have since voluntarily withdrawn their membership in accordance with the applicable provisions of the Labour Relations Act and the union's constitution. She maintained that the decision to withdraw their membership from the Claimant union was voluntarily made by the concerned employees of their own free will, and without any

form of coercion, inducement, intimidation, or interference by the 1st Respondent or its officers.

16. She reiterated that the 1st Respondent is a body corporate with a distinct legal personality, separate and independent from the 2nd Respondent and as such, the 1st Respondent does not bear, assume, or inherit the legal obligations, responsibilities, or liabilities of any other corporate entities operating within the same sector. She further averred that Legal Notice No. 168 on the Deduction of Union Fees expressly referred to the KBA as the "Employer," and not the 1st Respondent. Consequently, she contended that the obligations arising under the said Legal Notice do not automatically or by implication extend to the 1st Respondent.
17. Having considered the pleadings, evidence and the written submissions filed by both sides, the following issues fell for determination:-

- a) Whether the Recognition Agreement and the CBA between the Claimant and the 2nd Respondent bind the 1st Respondent.
- b) Whether the 1st Respondent is obliged to deduct and remit trade union dues to the Claimant from its members.
- c) Whether the Claimant is entitled to deduction and remittance of agency fees from the 1st Respondent is unionisable staff.
- d) Whether the reliefs sought are merited.

Analysis

The Recognition Agreement and the CBA

18. The Claimant contended that the 1st Respondent, being a member of the 2nd Respondent (Kenya Bankers Association), is bound by the Recognition Agreement and the Collective Bargaining Agreements executed between it and the 2nd Respondent. It maintained that by the Recognition Agreement signed on 4th October 2000, the 2nd Respondent

accorded full recognition to the Claimant on behalf of the banking section, as the negotiating body representing employees of members of the association.

19. The 1st Respondent, on the other hand, submitted that mere membership in an employers' organization does not, in and of itself, render a recognition agreement executed between the said organization and a trade union automatically binding upon each individual member employer. It relied on Section 21 of the Labour Relations Act, 2007, which expressly confers upon a registered employers' organization a distinct legal personality with the status of a body corporate. The organization is therefore capable of suing and being sued, and of entering into contracts and performing legal acts in its own name and independent of its individual members.

20. The 1st Respondent further relied on the doctrine of privity of contract, that only parties to a contract can sue or be sued on it. Indeed, the doctrine of privity of contract is well

established in our jurisprudence. However, it has to be appreciated that labour relations and collective bargaining, by their very nature contemplates representation of multiple employers by an employers' organisation.

21. It fortified its position by citing **Kenya Union of Commercial Food and Allied Workers v Midal Group (EPZ) Ltd [2021] eKLR**, where the court held that, a recognition agreement entered into by an employers' organisation, does not bind the individual members of the organization except where the terms are expressly negotiated and adopted, and not by mere association or membership. That each employer retains independent legal standing, and cannot be presumed to have assumed obligations arising from agreements to which it was neither a direct party nor an express signatory.

22. The Respondent further cited the case of **Social Service League, M.P. Shah Hospital v Kenya Union of Domestic, Hotels, Educational Institutions and Allied**

Workers [2018] KEELRC 1437 (KLR), where the court underscored that recognition agreements and collective bargaining agreements are contractual in nature and become legally binding only upon the parties' express and unequivocal consent. The court emphasized that such instruments are consensual, requiring a clear manifestation of the parties' intention to be bound.

23. It further cited **Kuria v Cooperative Bank of Kenya Limited [2025] KEELRC 470 (KLR)** at paragraph 78 where the court held that the general principle is that Collective Bargaining Agreements have contractual effect on the parties. It urged that such agreements do not have contractual effect on non-parties. The 1st Respondent, not being a signatory to the Recognition Agreement or the CBA, cannot automatically be bound by them.

24. Section 21 of the Labour Relations Act, 2007 which was cited by the Respondent above provides as follows:-

"A trade union, employers' organisation or federation shall be registered as a body corporate

a) with perpetual succession and a common seal;

b) with the capacity in its own name to

i. sue and be sued; and

ii. enter into contracts; and

c) hold, purchase or otherwise acquire and dispose of movable and immovable property. "

25. In **Kenya Hotels and Allied Workers Union v Hilton Hotel Nairobi [2022] KECA 69 (KLR)**, the Court of Appeal held that:-

"27. ... Upon joining the Association, the respondent ceased to be a single employer for purposes of collective -bargaining, and under Article 41 of the constitution and section 6(1) of the Labour Relations Act the respondent had the right to join an employers' organization and participate in its activities including collective bargaining. In the circumstances, the appellant's demand for individual recognition with the

respondent was in total disregard of the respondent's agreement with the other employers."

26. The above binding precedent is clear that once an employer joins an employers' organization, it ceases to be independent entity for purposes of collective bargaining. The corollary to the foregoing is that it is bound by the recognition and collective agreements entered into between the employers' organization and the trade union representing the employees in the organization. It is immaterial whether the employees of that individual employer are members of the trade union or not. So long as the employer has exercised its freedom to join and participate in the activities of the sectoral employers' organization, it remains bound by the recognition and collective agreements executed by the organization.

27. This court must emphasize that the section 54 of the Labour Relations Act was deliberate in providing for two categories

of recognition of trade union. Subsection (1) provides for recognition by an individual employer where a trade union represents a simple majority of that employer's unionisable staff while subsection (2) is about recognition by an employers' organisation of a trade union that represents a simple majority of the unionisable staff within the organisation. It follows that once the employer joins the employers' organisation, the trade union does deal with the individual employer except for purposes of enforcing the recognition and collective agreements concluded by the organisation, or agitating for the rights of its members.

28. This court finds that the 1st Respondent is undoubtedly a member of the 2nd Respondent. It appears as number 22 in the list of members of the 2nd Respondent (Appendix "A") at page 27 of the Claimant's bundle of documents. The principles of collective bargaining do not fathom any requirement that an individual member of the sectoral employers' organization must first ratify or adopted the Recognition Agreement or the subsequent Collective

Bargaining Agreements between the organization and the trade union representing employees within the organization.

29. By consenting to join the employers' organization an individual employer, automatically consents to the Recognition Agreement between the organization and the trade union representing the sector. It also consents to the Collective Bargaining Agreement concluded between the organization and the trade union. In light of the foregoing matters, this court finds and holds that the recognition and collective agreements entered into between the Claimant and the 2nd Respondent automatically bind the 1st Respondent in its individual capacity.

30. Besides the contracts between itself and its individual employees are automatically amended by the collective agreements between the 2nd Respondent and the claimant unless the individual contracts provide for superior benefits. This ensures there equity of the terms of employment within the sector. Therefore, it is up to the individual member to

remain vigilant to ensure that the representatives of the employers' organization make sound bargains.

Deduction and remittance of trade union dues

31. The Claimant prayed for an order directing the 1st Respondent to deduct and remit trade union dues for its sixty-five (65) members and from any other future members as per the check-off forms and Legal Notice Number 169 of 2024. The Claimant relies on Section 48 of the Labour Relations Act, 2007 and Section 19 of the Employment Act, 2007.

32. Section 48 of the Labour Relations Act, 2007 provides for deduction of trade union dues. Subsection (1) states:-

"An employer shall deduct trade union dues from the wages of an employee who is a member of a trade union if the employee has, in writing, authorised the deduction of the dues from his or her wages."

33. Section 48(2) requires that the authorization be in a prescribed form (Form S), signed by the employee, and witnessed. Section 48(3) provides that the trade union shall serve the employer with the deduction authorizations and a copy of the trade union's certificate of registration.

34. The Claimant has exhibited at pages 58 to 96 of its bundle, check-off forms (Form S) for sixty-five (65) employees. These forms are duly signed by the employees. The Claimant also exhibited Gazette Notice Number 169 of 2024 at page 120 of its bundle containing an order by the Cabinet Secretary. The 1st Respondent does not dispute receiving these check-off forms and the order.

35. However, it contended that a number of its employees who had initially been enlisted as members of the Claimant union have since voluntarily withdrawn their membership. It filed notices of withdrawal from several of the recruited employees at pages 97 to 118 of the Claimant's bundle.

36. The court in **Kenya Union of Commercial Food and Allied Workers v Sheer Logic Management Consultants Limited [2022] KEELRC 1787 (KLR)** addressed the issue of union membership and withdrawal. The court recognized that employees have the right to join or leave a trade union of their choice, as enshrined in Article 41 of the Constitution.

37. This court has considered the evidence on record. The Claimant served check-off forms for sixty-five (65) members. However, by the time of filing the claim on 4th September 2025, the Claimant had already received twenty (20) revocations or resignations from members recruited. The Claimant contended that the resignations were a result of intimidation and harassment by the 1st Respondent's Human Resources staff who visited branches on 26th August 2025 directing union members to resign.

38. The 1st Respondent denies any form of coercion, inducement, intimidation, or interference. RW1 stated that the decision by

employees to withdraw their membership was made voluntarily and of their own free will.

39. This court finds that the Claimant has not adduced sufficient evidence to prove that the twenty (20) employees who resigned from the union did so as a result of intimidation and harassment by the 1st Respondent. No witness statement from any of the affected employees was filed to support the allegation of intimidation. The mere fact that resignations occurred after the 1st Respondent's staff visited branches is not conclusive proof of intimidation.

40. As regards the remaining members who have not resigned, Section 48 of the Labour Relations Act, 2007 imposes a mandatory obligation on the employer to deduct and remit trade union dues once valid check-off forms have been served. The court in **Signon Group v Kenya Long-Distance Truck Drivers and Allied Workers Union [2023] KEELRC 2804 (KLR)** affirmed that deduction of union dues is contingent upon receipt of duly filled and

signed check-off forms as required by the Labour Relations Act.

41. Accordingly, this court finds and holds that the 1st Respondent is obligated to deduct and remit trade union dues for those 45 employees who have validly authorized such deduction and have not validly revoked their membership. However, this obligation does not extend to employees who have validly withdrawn their membership from the Claimant union in accordance with the law as their case is to be dealt with differently under section 49 of the Labour Relations Act.

Entitled to Agency Fees

42. The Claimant prays for an order directing the 1st Respondent to deduct and remit agency fees as per order by the Cabinet Secretary for labour published in the Legal Notice No. 168 of 2024. The claim for agency fees is founded on Section 49 of the Labour Relations Act, 2007, the Collective Bargaining

Agreement between the Claimant and the 2nd Respondent, and the said order by the Cabinet Secretary.

43. Section 49 of the Labour Relations Act, 2007 provides:-

"(1) A trade union that has concluded a collective agreement with an employer, group of employers or an employers' organisation, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Minister in writing to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionisable employee who is covered by the collective agreement but is not a member of the trade union.

(3) An employer in respect of whom the Minister has issued an order as specified in subsection(1) shall commence deducting agency fees from the employees named in the Minister's notice within thirty days of receiving the Minister's notice."

44. The Court of Appeal in **Micato Safaris v Kenya Game Hunting and Safari Workers Union** affirmed the deduction of agency fees when it held that stoppage of payment of agency fees limits the rights and freedoms of workers. Again, in **Kenya Hotels and Allied Workers Union v Hilton Hotel Nairobi [2022] KECA 69 (KLR)**, the Court of Appeal held that:-

“In other words, the Gazette Notice is clear that the agency fees are deductible from all unionisable employees including those who are not members of the recognised union, in this case KUDHEIHA, so that the appellant’s complaint in respect of the deductions is unfounded.”

45. I agree entirely with the above decisions that it is lawful under section 49 of the Labour Relations Act for an employer to deduct an agency fee from the wages of an employee covered by a CBA who is not a member of the trade union.

The agency fee is justified because the respective

employees deliberately decline union membership to avoid paying subscription fees under section 48 of the Act, but then benefit from the CBAs negotiated by the trade union using the subscriptions of the members.

46. In this case there is a CBA negotiated and registered which covers the 1st Respondent's employees who are not members of the Claimant union or who resigned from the union membership. Pursuant to the registration of this CBA, I note that the minister published Gazette Notice No. 168 of 2024 giving effect to the applicable law. The 1st Respondent alleged that the employer named there is the 2nd Respondent and itself.

47. The Gazette Notice No. 168 of 2024 at pages 119 to 121 of Claimant's bundle at paragraph 2, expressly refers to "the Kenya Bankers Association" and directs deduction of agency fees at the rate of 1% of the basic salary subject to a minimum of Kshs. 250 and a maximum of Kshs. 1,500 of each unionisable employee of the bank. However, I see no merits in that since the 2nd respondent is made of the various

members in the list appearing as APPENDIX “A”(page 9 of the CBA) at page 39 of the claimant’s bundle.

48. While appreciating that the notice was not elegantly drafted, I see no prejudice repeating that the 1st Respondent was, and still is bound, by the CBA and the order by the Cabinet Secretary to deduct agency fees from its employees who are not members of the claimant but who are covered by the CBA, and remit to same to the claimant. I say so because, the order is founded on the CBA which clearly stated on paragraph 1 that:-

“AN AGREEMENT made this 26th day of June 2023, BETWEEN members of the Kenya Bankers Association as listed in Appendix ‘A’ hereof (referred to as the Employers, which expression shall where the context so admits, include all and each of such members, together with any further members who may by mutual agreement be included hereinafter in this agreement) and the Banking Insurance & Finance Union (Kenya)...”

49. Accordingly, this court finds merit in the Claimant's claim for agency fees as the legal threshold prescribed under section 49 of the Labour Relations Act, 2007 has been met. Deduction of agency fees from employees' wages is contingent upon the existence of a valid recognition agreement, a duly executed collective bargaining agreement, and a ministerial order authorizing such deductions. These three elements form the mandatory statutory framework for the lawful imposition and collection of agency fees, and the Claimant has established them by evidence.
50. The Claimant has produced as exhibit a Recognition Agreement, duly registered Collective Bargaining Agreement at pages 17-57 of the Claimant's bundle is between the Claimant and the 2nd Respondent (KBA). It has also produced a Gazette Notice No. 168 of 2024, which is the ministerial order, pursuant to the said registered CBA.

Reliefs

51. I have already made a finding of fact that the 1st Respondent is entitled to bound by the CBA herein to deduct union dues and agency fees. Therefore, by dint of section 48 of the Labour Relations Act, I award the Claimant an order directing the 1st Respondent to deduct and remit trade union dues for the 45 members who have authorized such deduction and have not validly revoked their membership.
52. Again by dint of Section 49(1)(b) of the Labour Relations Act, I further award the Claimant an order directing the 1st Respondent to deduct and remit agency fees as per the order by the Cabinet Secretary published vide gazette notice number 168 of 2024 in respect of all the 1st Respondent's unionisable employees, who are not members of the Claimant.
53. The 1st Respondent is directed to provide the Claimant with a list of all its unionisable employees within thirty (30) days from the date of this judgment.

54. The Claimant prays for an order directing the 1st Respondent to use the list so provided to effect deduction and remittance of agency fees as per Legal Notice No. 168 of 2024. For the reasons set out in paragraphs 46 to 51 above, this prayer fails. The ministerial order is directed at the 2nd Respondent, not the 1st Respondent. Without a valid order binding the 1st Respondent, this court cannot compel it to deduct agency fees.
55. The Claimant prays for costs of the claim. Costs follow the event and therefore the 1st Respondent shall pay the costs of this suit to the Claimant.

Conclusion

56. I have found that the Claimant has proved its case against the 1st respondent on a balance of probability. Consequently, I enter judgment for the Claimant against the 1st Respondent as follows:-

- a) The 1st Respondent be and is hereby ordered and directed to deduct and remit trade union dues to the Claimant in accordance with Section 48 of the Labour Relations Act, for those employees who have validly authorized such deduction.
- b) The 1st Respondent be and is hereby ordered and directed to deduct and remit agency fees to the Claimant in accordance with Section 49 of the Labour Relations Act, for those employees who are not members of the Claimant union but are covered by the CBA.
- c) The 1st Respondent be and is hereby ordered and directed to provide the Claimant with a proper record of all its unionisable employees within thirty (30) days from the date of this judgment.

d) The 1st Respondent shall pay the costs of this suit to the Claimant plus interest at court rates from the date of filing the suit until payment in full.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 3RD DAY OF MARCH, 2026.

**ONESMUS MAKAU
JUDGE**

Appearance:

Juma Odera for the Respondent

No appearance for the Claimant