

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS AT
KAKAMEGA
CAUSE NO. E025 OF 2025

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS AND
HOSPITALS WORKERS.....CLAIMANT**

VERSUS

**BOARD OF MANAGEMENT
MUSENO SECONDARY SCHOOL.....RESPONDENT**

(BEFORE HON. JUSTICE DAVID NDERITU)

JUDGMENT

I. INTRODUCTION

1. In a statement of claim dated 16th June 2025 filed in court on 20th June 2025 the claimant herein (a trade union) filed this claim seeking the following reliefs –
 - a) A declaration that the respondent action was unfair, unlawful and/or illegal*
 - b) The respondent be encouraged /advised to negotiate the CBA*
 - c) The respondent be compelled to deduct and remit union dues.*
 - d) The costs of this suit to be paid by the respondent.*
2. The statement of claim was accompanied with a verifying affidavit, a list of witnesses, a list of documents, and copies of the listed documents.

3. The respondent entered appearance through the Attorney General and filed a response to the statement of claim dated 16th September 2025 seeking for the dismissal of the claim with costs for lack of merit.
4. On 9th October 2025 the claimant filed a reply to the respondent's response dated 25th September 2025 accompanied with the written statement of Thomas Mboya, a further list of documents and copies of the listed documents attached.
5. By consent, the claim was canvassed by way of written submissions. The claimant's representative, Mr Shiraku, filed his written submissions dated 16th October 2025. The Respondent did not file submissions.

II. THE CLAIMANT'S CASE

6. The claimant's case is expressed in the statement of claim, the filed documentary evidence, and the written submissions by its representative.
7. The claimant's case is that it executed a recognition agreement with the respondent on 3rd October 2017. It is stated that the recognition thereby created a legal obligation for the respondent to engage the claimant in collective bargaining in accordance with ***Article 41(5) of the Constitution***, which guarantees every trade union and employer the right to engage in collective bargaining, and ***Section 57(1) of the Labour Relations Act, 2007(LRA)***,

- which obligates a recognized employer to conclude a Collective Bargaining Agreement (CBA) with the recognized trade union.
8. It is stated that on 24th November 2023 seven (7) unionisable employees of the respondent voluntarily joined the claimant and executed check-off forms. The said forms were forwarded to the respondent for implementation with effect from 31st March 2024, thereby triggering the respondent's statutory obligation under **Section 48(2) of the LRA** to deduct union dues from the wages of union members and remit the same to the claimant.
 9. It was pleaded that on 14th May 2024 the claimant forwarded a draft CBA proposal to the respondent and requested the respondent to submit a counter-proposal and propose dates for commencement of negotiations by 5th June 2024. On the same date the claimant issued a reminder to the respondent to commence deduction and remittance of union dues by 31st May 2024. The respondent failed to respond to both requests.
 10. On 16th July 2024, the claimant wrote to the respondent seeking to convene a meeting for CBA negotiations on 29th July 2024. However, when the claimant attended the respondent's premises on the scheduled date no meeting took place as neither the Principal nor members of the Board of Management (BOM) were present. This failure to engage the Union in negotiations amounted to a breach of the duty to bargain in good faith.
 11. On the same date the Claimant issued a further demand for remittance of union dues with a deadline of 2nd August 2024 and

then issued a final reminder dated 24th September 2024 requiring compliance before the end of September 2024. It is stated that the respondent's continued refusal to deduct and remit union dues constituted a violation of **Section 48(2) of the LRA**.

12. Further, on 24th September 2024 the claimant sought another appointment for CBA negotiations and scheduled the meeting for 14th October 2024. The respondent's representatives did not show up thereby further breaching the constitutional and statutory duty to engage in collective bargaining.

13. On 16th October 2024 the Secretary General of the claimant formally demanded that the respondent remit all outstanding union dues within fourteen (14) days. Instead of complying with the statutory check-off mechanism, the respondent through the Principal issued a letter dated 23rd October 2024 directing union members to remit their monthly subscriptions in cash directly to the Union. It is stated that this direction amounted to unlawful interference with trade union administration and financial operations and undermined the mandatory statutory scheme of deductions under **LRA**.

14. The respondent further forwarded to employees a list capturing only six (6) union members despite seven (7) duly executed check-off forms having been submitted thereby selectively excluding one union member from statutory deductions in further violation of **Section 48(2) of the LRA**.

15. In the same letter dated 23rd October 2024 the respondent alleged the existence of an active case before the Employment and Labour Relations Court in Kisumu, which the Claimant was not privy to, and relied on the alleged case as a justification for refusing to engage in CBA negotiations. This conduct was inconsistent with the obligation to bargain in good faith imposed by **Article 41(5) of the Constitution** and **Section 57(1) of the LRA**. No lawful basis was demonstrated for suspending collective bargaining on account of the alleged proceedings.

16. Owing to the respondent's continued breach of its constitutional and statutory obligations, the Union Branch Secretary reported a trade dispute to the Secretary General on 11th November 2024 who in turn reported the dispute to the Cabinet Secretary for Labour on 20th November 2024 pursuant to the dispute resolution mechanisms under the **LRA**. The Chief Industrial Relations Officer appointed a conciliator on 3rd December 2024. The conciliator attempted to convene meetings between the parties but the conciliation process did not resolve the dispute, culminating in the issuance of a certificate of unresolved dispute thereby vesting this Court with jurisdiction to determine the dispute.

17. The claimant asserts that it has placed before the Court documentary evidence demonstrating majority membership and compliance with statutory requirements. This includes a duly executed Recognition Agreement, CBA proposals, signed check-off forms, and correspondence showing demands for deduction

and remittance of union dues, as well as invitations to the respondent to constitute a negotiation team. The Claimant further relies on the respondent's own communication directing employees to remit union dues individually and in cash, which the Claimant contends is unlawful.

18. The claimant contends that the respondent's denial of membership of seven (7) employees is a bare assertion unsupported by evidence. It is argued that once signed check-off forms are produced, the evidential burden shifts to the employer to rebut the same with credible evidence such as payroll records or affidavits.
19. The claimant maintains that the recognition agreement executed between the parties remains valid and binding and that the respondent is under a continuing statutory obligation to negotiate a CBA and deduct and remit union dues. The claimant argues that directing employees to remit union dues in cash constitutes unlawful interference with freedom of association and unfair labour practice.
20. While conceding that there was a previous suit between the parties, the claimant argues that the earlier matter was dismissed on a technicality relating to it not having attained simple majority at the time and not on the substantive merits of collective bargaining or deduction of union dues. The Claimant contends that it has since recruited additional members and attained the statutory threshold and that the present claim is founded on new

facts and continuing violations. It is therefore argued that the plea of *res judicata* is inapplicable.

21. The claimant avers that it complied with the primary statutory dispute resolution mechanism by reporting the dispute to the Ministry of Labour whereby a conciliator was appointed but the dispute remains unresolved due to the respondent's refusal to comply with statutory obligations. Accordingly, the claimant submits that the matter is properly before the Court.

III. THE RESPONDENT'S CASE

22. The respondent's case is contained in its response to the statement of claim. In the said response to the claim, the respondent contends that the claimant has not attained a simple majority membership as required under ***Section 54(1) of the LRA*** and, therefore, lacks the legal capacity to demand recognition and negotiate or execute a CBA.

23. The respondent avers that the dispute is ***res judicata*** citing a cause that was heard and determined on 2nd November 2023. It is argued that the present claim is barred under ***Section 7 of the Civil Procedure Act***.

24. The respondent further denies that seven (7) of its employees are members of the claimant union and puts the claimant to strict proof of membership.

IV. SUBMISSIONS

25. Mr. Shiraku representing the claimant submitted on three issues – ***Whether the respondent’s refusal to negotiate a collective bargaining agreement (CBA) constitutes a violation of the law and the Recognition agreement; Whether the respondent’s failure to deduct and remit union dues amounts to unfair labour practice; and, Whether the claimant is entitled to costs of this suit.***
26. On the first issue a plethora of decisions was cited – ***KUDHEIHA Workers Union v Board of Management, St Peter’s Mumias Boys High School (ELRC Kakamega Cause No. 24 of 2010); KUDHEIHA Workers Union v Board of Management, Kaimosi Girls High School (2022) eKLR; and Kenya Chemical and Allied Workers Union v Bamburi Cement Limited (2019) eKLR*** to stress that ***Section 54 of the LRA*** imposes a mandatory obligation on an employer who has signed a Recognition Agreement to negotiate and conclude a CBA with a recognised union. It is submitted that the refusal by the respondent to negotiate amounts to bad faith and unfair labour practice contrary to ***Article 41 of the Constitution.***
27. On the second issue, relying on the findings in ***Kenya Engineering Workers Union v Steel Structures Limited (2014) eKLR*** and ***KUDHEIHA Workers Union v Board of Management, Bunyore Girls High School (ELRC Kisumu Cause No. 89 of 2011)***, it is submitted that ***Section 48(3) of the LRA*** places a statutory obligation on an employer to deduct and remit union dues upon receipt of duly signed check-off forms.

28. It is submitted that the respondent's instruction to employees to remit dues personally is unlawful and it interferes with trade union activities and undermines the union's organisational and financial capacity.

29. The claimant submits that the respondent's response to the claim lacks merit and is unsupported by evidence. The claimant asserts that it has demonstrated through documentary evidence that a valid Recognition Agreement exists; that claimant enjoys majority membership; that CBA proposals and duly executed check-off forms were submitted; and that the claimant complied with statutory dispute resolution and conciliation procedures before approaching the court.

V. ISSUES FOR DETERMINATION

30. The court has carefully and dutifully gone through the pleadings filed, the documentary evidence tendered, and the written submissions. The following issues commend themselves to the court for determination –

a) Whether this suit is resjudicata.

b) Whether the claimant has met the threshold for recognition and whether a valid recognition agreement is in place.

c) Whether the claimant has made a case for the court to compel the respondent to commence negotiations for a CBA.

d) Who should bear the costs of the cause?

VI.RES JUDICATA

31. The ingredients of *res judicata* under **Section 7 of the Civil Procedure Act** are, firstly, that the issue in dispute in the former suit between the parties must be directly or substantially be in dispute between the parties in the suit where the doctrine is pleaded as a bar. Secondly, that the former suit should involve the same parties, or parties under whom they or any of them claim, litigating under the same title and, lastly, that the court or tribunal before which the former suit was litigated was competent and determined the suit with finality.
32. The claimant had filed ***Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) v Board of Management Museno Secondary School [2023] KEELRC 2768 (KLR)*** which was determined on 2nd November 2023. Neither of the parties availed a copy of the judgment. The respondent stated that the previous suit was dismissed on the ground that the claimant lacked of simple majority at the time of recognition. The claimant argues that the present suit relates to a different cause of action which is collective bargaining and deduction of union dues. The respondent did not reply to this assertion.
33. The court has had the opportunity to peruse the previous suit which is alleged to have been based on the same issues as the present suit. In the said cause the court (Baari J.) while dismissing the same observed that while the claimant had recruited five

employees, most of them apart from two had either died, retired, or withdrawn their membership and thus the claimant failed to meet the threshold for recognition.

34. The claimant now claims that there is a recognition agreement already in place. This has not been disputed by the respondent. Clearly, the present dispute arises from fresh facts regarding deduction of union dues and collective bargaining and therefore constitutes a new cause of action. Moreover, recruitment of union members is a continuous process and while the claimant's membership was found to have been below the simple majority threshold in the previous suit, that position has since changed on recruitment of new members, a position the respondent merely denied without any evidence to the contrary. The court finds and holds that the plea of *res judicata* is thus not sustainable as the issues now in contest though involving the same parties are substantially different as the ground has shifted in terms of membership of the union.

VII. RECOGNITION

35. *Section 54 (1) of the LRA* provides as follows regarding recognition agreements – ***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.***

36. The respondent submitted that the claimant has not recruited a simple majority of membership from its employees. However, the

claimant produced duly executed check-off forms evidencing union membership of seven (7) unionisable employees. This documentary evidence shifted the evidential burden to the respondent to rebut membership through payroll records or other credible evidence to show that the number of the unionisable employees had not attained a simple majority. The respondent in its response to claim denied that the claimant had recruited seven unionisable employees. Nevertheless, no records were availed to confirm the member of the unionisable employees.

37. The respondent vide its letter stamped received on 23rd October 2024 advised six of its employees to pay their union dues directly to the union. This was an admission of union membership of at least the six employees. The respondent's mere denial of union membership of its employees without any supporting documentation tilts the evidence in the claimant's favour. The Court is satisfied that the claimant demonstrated sufficient membership for purposes of engaging in negotiations for a CBA.

VIII. RECOGNITION AGREEMENT

38. The claimant produced a recognition agreement executed by the parties on 3rd October 2017. The respondent in the response to the claim merely denied existence of the recognition agreement.

However, the said agreement bears the stamp of the school and it is signed by the principal thereof. There is evidence of steps taken by the respondent to report any alleged forgery or fraud in regard to the execution of the said recognition agreement. This clearly

demonstrates that the said agreement was lawfully executed and the respondent's denial is made in bad faith.

39. *Section 54(6) of the LRA* provides that – *If there is a dispute as to the right of a trade union to be recognized for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII. (Emphasis added)*

40. The respondent did not file any dispute on the recognition agreement or the recognition of the claimant before the conciliator in accordance with the law cited above.

41. The court finds and holds that even if the recognition agreement was to be deemed invalid, which is however not the case, the respondent is mandated by *Section 54(1) of the LRA* to recognize the claimant having met the simple majority legal threshold in the absence of evidence to the contrary that the said number is below the simple majority. The respondent as the custodian of the employment records bears the burden to avail and further to do so takes the presumption that indeed no such records exist and if they do they must be contrary to the allegations made by the respondent.

42. The Court finds and holds that the Recognition Agreement executed on 3rd October 2017 remains valid and binding. The

respondent did not demonstrate that the Agreement was lawfully terminated or revoked in accordance with the *LRA*.

IX. UNION DUES

43. The foundation of the relationship between workers and unions is membership fees as envisaged under *section 48 of the LRA*.

Section 48 (2) of the LRA provides that – “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 monies so deducted— (i) into a specified account of the trade union; or (ii) in 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.”

44. The claimant produced the notice to employer dated 6th March 2024 authorising deductions in which it cited the authority to deduct pursuant to *Legal Notice No. 195* and gave details on the deductions. Seven employees of the respondent had signed FORM S being the check-off form.

45. The respondent vide its letter stamped 23rd October 2024 instructed six of the employees to individually remit their union

dues as they had done before. The court finds and holds that the claimant satisfied the provisions of **Section 48 of LRA** in seeking deductions of the more than five employees of the respondent.

46. **Section 50 (8) of LRA** gives conditions for the deductions of union dues as follows: -

‘8) No employer shall— (i) fail to comply with an order or a notice issued under this Part; (ii) deduct any money and not pay it into the account designated in the notice issued by the Minister; or (iii) pay money into an account other than the account designated in the notice issued by the Minister.’

47. The court finds that the respondent upon receipt of the notice of authority to deduct with the FORM S (check off deduction form) had no choice but to comply by way of effecting the deductions and remittance of the same to the claimant. The employees had signed check off forms and desired to join the union as of a right guaranteed under **Article 41 of the Constitution**. The purported direction by the respondent to the employees for them to pay their union dues individually and directly was unlawful and outside the legal framework of the **LRA**. It was made in bad faith

48. The provisions of the **LRA** on deduction and remittance of union dues is couched in mandatory terms that obligate an employer to deduct and remit union dues where employees have signed the check off FORM S as submitted by a union as it is the case in this cause.

49. The court finds and holds that the claimant met the legal threshold to compel the respondent to effect the deductions and to remit the same without undue delay and unnecessary back and forth.

50. Consequently, the court hereby orders the respondent to start deduction of check-off dues from the salaries of the employees who have voluntarily signed the union forms acknowledging membership into the claimant union effective from the date of this judgment as per the details in the check-off forms.

X. CBA

51. The court finds and holds that the continuous reference by the respondent to the previous suit which was determined on 2nd November 2023 as a reason for its failure to negotiate a CBA is in bad faith. Additionally, the respondent failed to attend scheduled collective bargaining meetings and did not respond to correspondence inviting it to negotiate a CBA as per the evidence adduced by the claimant. The court finds and holds that since there is a valid recognition agreement between the parties and the claimant has already met the simple majority threshold the parties should engage collective bargaining.

XI. ORDERS

a) There is a valid recognition agreement between the parties dated 3rd October 2017.

- b) The respondent shall commence deduction of check-off dues from the salaries of the employees who have voluntarily signed the union forms acknowledging membership with the claimant union effective from the month of this judgment.*
- c) The parties shall negotiate and conclude a CBA within 60 days of this judgment.*
- d) There is no order as to costs.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 19TH DAY OF MARCH 2026.**

.....
DAVID NDERITU
JUDGE