

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

**ELRC CAUSE NO E085 OF 2024**

**TRANSPORT WORKERS UNION (K)**  
.....**CLAIMANT**

**VERSUS**

**PETANNS DRIVING SCHOOL**  
**LIMITED.....RESPONDENT**

**RULING**

**Background**

1. The Claimant instituted this action alleging that although it has recruited fifty (50) of the Respondent’s employees and forwarded to the Respondent instructions for deduction of trade union fees from the said employees, the Respondent has declined to do so. The Claimant contends that the Respondent has instead resorted to intimidation of the affected employees in a bid to force them to renounce their trade union membership. As such, it prays for orders to compel the Respondent to deduct and remit the impugned trade union dues and to stop intimidating the employees in question on account of their trade union membership.
2. Together with the Memorandum of Claim, the Claimant filed the application dated 1<sup>st</sup> February 2024 through which it seeks inter, alia, the following orders:-

- a) An order to compel the Respondent to deduct and remit to it trade union dues from the fifty (50) employees pending disposal of the suit.
  - b) An order to compel the Respondent to pay all the unremitted trade union dues from its resources.
  - c) An order to bar the Respondent from threatening or intimidating the aforesaid employees on account of the trade union membership.
3. The Respondent filed a Notice of Preliminary Objection to the application on the following grounds:-
- a) That the application is bad in law, incompetent and misconceived as it seeks a final order at the interim stage of the proceedings.
  - b) That the application is an abuse of the court process as it seeks to circumvent the requirement for a ministerial order under section 48 of *the Labour Relations Act*.
  - c) That the application is bad in law for suing a non-entity.
4. The court directed that the objection be disposed of through written submissions. The parties have since filed their respective submissions.

### **Analysis**

5. It is now settled that a preliminary objection should only raise a pure point of law which does not require to be established through evidence (see ***Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd***). As such, any contention, assertion or argument which

requires the court to interrogate evidence in order to determine it does not qualify as a pure point of law.

6. Ground two of the preliminary objection is to the effect that the application is bad in law since it seeks to circumvent the requirements for a ministerial order under section 48 of *the Labour Relations Act*. The Respondent contends that the Claimant has not presented a ministerial order issued under the aforesaid provision of statute which is a prerequisite for an employer to deduct and remit trade union dues to a trade union.
7. Whether or not the Claimant has been issued with a ministerial order which is required under section 48 of *the Labour Relations Act* is a matter which can only be established through evidence. As such, it is not a pure point of law which qualifies to be raised as a preliminary objection.
8. Ground three of the preliminary objection is that the Claimant has sued a non-entity. The Respondent contends that it is not the individual whose name is captured in the pleadings. To support this contention, it has sought to produce its certificates of registration to speak to the matter.
9. By referring to the aforesaid certificates of registration to establish the preliminary objection, the Respondent affirms the fact that the objection is not anchored on a pure point of law. It requires reference to evidence to be established, a matter which disqualifies it from being a preliminary objection.

10. The final ground of objection is that the application seeks final orders at interlocutory stage. In the court's view, this again does not qualify as a preliminary objection. It ought to have been raised as a ground of opposition to the application.
11. Be that as it may, the court has looked at the orders sought in the application and those sought in the suit and it is apparent that they are one and the same. As such, there is merit in the Respondent's contention that if the orders are granted at the interim stage, this will be tantamount to disposing of the suit before it goes to trial.
12. It is for this reason that I will decline to entertain the impugned application. It is my view that given the fact that the orders sought in the application and the suit are the same, the parties should go to the main trial in lieu of the application. However, pending disposal of the suit, the Respondent should refrain from victimizing the employees who have joined the Claimant on account of their trade union membership.

### **Determination**

13. In the ultimate, the court declines to grant the preliminary objection for the following reasons:-
  - a) Grounds numbers two and three in the Notice of Preliminary Objection do not raise a pure point of law. Therefore, they do not qualify to be raised as preliminary objections.

- b) Ground number one ought to have been raised as a ground of opposition and not a preliminary objection to the application.
- c) Nevertheless, the court finds that most of the orders which the Claimant seeks in the application are the same as the orders that are sought in the suit. As such, the court agrees that to grant the said orders at the interlocutory stage of the proceedings will be tantamount to determining the main dispute before trial. Consequently, the court declines the application dated 1<sup>st</sup> February 2024 on this account and instead directs that the parties list the main cause for trial.
- d) However, pending disposal of the suit, the Respondent is ordered to refrain from victimizing the employees who have joined the Claimant on account of their trade union membership.
- e) Costs of the application to be in the cause.

**Dated, signed and delivered on the 19<sup>th</sup> day of March,  
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**