

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. E850 OF 2022**

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

**VERSUS**

**TECHNICAL UNIVERSITY OF  
KENYA.....RESPONDENT**

**KENYA TERTIARY AND SCHOOLS  
WORKERS UNION.....INTERESTED  
PARTY**

**J U D G M E N T**

1. Through an Amended Memorandum of Claim dated 19<sup>th</sup> December 2024, the Claimant avers that it is the duly mandated union representing employees working in universities within job grades 1 to 4. The Claimant further states that it has over 250 members employed by the Respondent, in respect of whom the Respondent has been remitting union dues and agency fees pursuant to an existing Recognition Agreement and Collective Bargaining Agreement (CBA).

2. The Claimant further avers that it has continued to recruit additional members and has served the Respondent with duly executed check-off forms in respect thereof.
3. The Claimant contends that the Respondent has declined and/or failed to remit union dues from January 2022 to date. Consequently, the Claimant seeks the following reliefs against the Respondent:

*a) The Respondent to be compelled to deduct and remit union dues as has been the practice, all totaling KSHS.2,562,140/=.*

*b) The Respondent be instructed to pay the outstanding arrears of Union dues and agency fees.*

*c) The Claimant prays that the management should be compelled to remit the union dues. pay the monies owed to the union with his own monies.*

*d) The Respondent be estopped from victimizing members of the union.*

*e) The cost to this suit and interests thereupon.*

4. The Respondent has opposed the Claim through a Replying Affidavit sworn by **Ruth Kirwa** on 10<sup>th</sup> January 2024. In the said Affidavit, Ms. Kirwa acknowledges the existence of a Recognition Agreement and a CBA between the Respondent and the Claimant. She avers that the Respondent deducts and remits union dues to the Claimant on a monthly basis. Ms. Kirwa further states that following a consent recorded in Milimani ELRC Cause No. E561 of 2021,

the Respondent has been remitting union dues in accordance with the terms of that consent and continues to do so as they fall due.

5. In Ms. Kirwa's view, the Claimant's claim is frivolous, vexatious, and devoid of merit. She therefore urges the Court to dismiss the claim with costs.
6. On 16<sup>th</sup> December 2024, the Interested Party's application for joinder was allowed by consent. Following its joinder, the Interested Party filed a Statement of Defence dated 15<sup>th</sup> January 2025 in which it avers that it is mandated to represent the interests of employees in polytechnics (national, public, provincial, divisional, village and youth), technical and vocational institutions, teaching and referral institutions, YMCAs, YWCAs, educational and training institutions and centres, as well as colleges (national, university medical, public, private and commercial) and schools including driving, nursing, secondary, special, primary, nursery and academies.
7. The Interested Party further avers that in February 2021, employees of the Respondent approached it with a request to voluntarily join its membership. According to the Interested Party, the said employees indicated that they had terminated their membership with the Claimant union and consequently executed check-off forms in favour of the Interested Party.

8. The Interested Party further avers that it forwarded duly executed check-off forms containing the names of 150 employees who had joined its membership to the Respondent, and that the said forms were duly received and acknowledged by the Respondent.
9. On the basis of the foregoing, the Interested Party has urged the Court to dismiss the claim with costs.
10. The matter proceeded for hearing on 24<sup>th</sup> November 2025, during which the Claimant and the Interested Party called oral evidence in support of the respective cases.
11. On its part, the Respondent elected not to present any witnesses and instead relied on the Replying Affidavit sworn by Ms. Kirwa on 10<sup>th</sup> January 2024.

### **Claimant's Case**

12. The Claimant called oral evidence through **Albert Njeru Obed** who testified as CW1. Mr. Njeru, who identified himself as the Secretary General of the Claimant union, started by adopting his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed by the Claimant as exhibits before the Court.

13. Mr. Njeru testified that the Claimant seeks orders compelling the Respondent to remit unpaid union dues allegedly deducted from its members but not remitted for the period between January 2022 and November 2024, amounting to a total of Kshs. 2,562,140.00.

14. He further averred that the Respondent knowingly and deliberately failed to remit the union dues deducted from members of the Claimant union in accordance with the consent recorded in Milimani ELRC Cause No. E561 of 2021 and/or the applicable CBA, beginning January 2022.

#### **Respondent's case**

15. As stated herein, the Respondent did not call any witnesses and instead relied on the Replying Affidavit of **Ruth Kirwa**, sworn on 10<sup>th</sup> January 2024.

#### **Interested Party's Case**

16. The Respondent called oral evidence through **Paul Kinyangi**, who testified as RW1. Mr. Kinyangi, who identified himself as the Interested Party's Secretary General, equally adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed on behalf of the Interested Party as exhibits before the Court.

17. Mr. Kinyangi testified that prior to the recruitment of the Respondent's non-teaching staff into the Interested Party's membership, the employees who

expressed interest in joining the Interested Party union confirmed that they had resigned from membership of the Claimant union.

18. He further averred that the Interested Party has on several occasions written to the Respondent seeking an explanation for its failure to deduct and remit union dues and to accord recognition to the Interested Party, which it maintains has recruited the majority of the Respondent's non-teaching staff.

19. According to Mr. Kinyangi, the Interested Party represents the majority of the Respondent's non-teaching staff. He further stated that he has never been served with any notices of resignation from the Respondent regarding members of the Interested Party to enable it adjust its membership pool accordingly.

### **Submissions**

20. The Claimant submitted that the Respondent has failed and/or refused to remit union dues deducted from its members for the period commencing January 2022 to date. It was the Claimant's position that it had established a *prima facie* case and that the orders sought ought to be granted as prayed, particularly as the Respondent had admitted the claim.

21. The Claimant further submitted that the Respondent's failure to adduce evidence meant that the evidence it had presented remained uncontroverted.

22.It was further submitted by the Claimant that the Interested Party failed to place before the Court a CBA or any Gazette Notice that would entitle it to the trade union dues in question.

23.On its part, the Respondent submitted that it has at all material times been ready and willing to remit the accumulated union dues to the union lawfully entitled to receive them.

24.It was the Respondent's position that the Claimant had satisfied the legal requirements for the deduction and remittance of union dues by producing valid check-off forms duly signed by the employees, Gazette Notice No. 13572, Gazette Notice No. 195, and a valid CBA dated 28<sup>th</sup> October 2019.

25.The Respondent further submitted that the Interested Party had not placed before this Honourable Court any documentary evidence to support its claim over the union dues. The Respondent contended that, in particular, the Interested Party produced no check-off forms, no Gazette Notice authorizing deductions in its favour, and no recognition agreement or CBA with the Respondent.

26. According to the Respondent, the Interested Party had therefore failed to establish any legal basis for its claim to the union dues deducted from its employees.

27. On the part of the Interested Party, it was submitted that the relationship between the Claimant and the Respondent collapsed after members of the Claimant union resigned and joined the Interested Party's union.

28. The Interested Party further submitted that the Respondent denied the 150 employees who had signed check-off forms the right to associate with the trade union of their choice. In this regard, the Interested Party contended that the Respondent violated the rights of the said employees contrary to Articles 36 and 41 of the Constitution, as read together with ILO Convention Nos. 87 and 98.

29. It was the Interested Party's further submission that the Respondent acted in breach of Sections 4(2) and 48(3), (6), and (7) of the Labour Relations Act.

### **Analysis and Determination**

30. Having considered the pleadings filed by the parties, the evidentiary material on record, and their respective submissions, the Court finds that the sole issue for determination is whether the Claimant is entitled to the reliefs sought.

31. The crux of the Claimant's case is that the Respondent has failed and/or refused to remit trade union dues allegedly deducted from its members beginning January 2022, and that as at November 2024, the outstanding unremitted amount stood at Kshs 2,562,140/-.
32. The Respondent denies the Claimant's assertions and maintains that it has been remitting the requisite payments to the Claimant union.
33. In support of its case, the Claimant produced a copy of Legal Notice No. 195 published on 1<sup>st</sup> November 2018, authorizing the deduction and remittance of trade union dues from employees who are members of the Claimant union.
34. The Claimant further produced copies of check-off forms bearing the names of 91 employees whom it asserts were recruited from the Respondent's workforce. It is apparent that the said check-off forms were forwarded to the Respondent's Vice-Chancellor through letters dated 20<sup>th</sup> April 2022, 26<sup>th</sup> April 2022, 28<sup>th</sup> April 2022, 17<sup>th</sup> May 2022, 8<sup>th</sup> July 2022, 15<sup>th</sup> July 2022, and 24<sup>th</sup> July 2023.
35. Pursuant to **Section 48(3) of the Labour Relations Act**, the Respondent was under a statutory duty to deduct union dues from the employees and remit the same to the Claimant's gazetted bank account upon being served with Legal Notice No. 195 of 2018 and the duly executed check-off forms by its employees.

36.Despite the Respondent’s assertions, there is no evidence on record that, from February 2022, it remitted to the Claimant’s gazetted bank account the trade union dues deducted from the employees who had executed the check-off forms submitted by the Claimant.

37.The Court has also considered the Interested Party’s assertion that it recruited 150 members from the Respondent’s workforce from February 2021, and has specifically taken note of the letter it exhibited, dated 22<sup>nd</sup> February 2021, addressed to the Respondent, through which it forwarded copies of check-off forms bearing the names of the said employees.

38.It is notable that the Respondent has not indicated or suggested that it effected trade union deductions from the employees whose names appear in the said check off forms.

39.Notwithstanding the foregoing observation, it is notable that the Interested Party did not produce before this Court an order envisaged under Section 48 (2) and (3) of the Labour Relations Act, authorizing the deduction and remittance of trade union dues from its members to its gazetted bank account.

40.In addition to the foregoing, the Court is mindful of the role and capacity of the Interested Party in this suit. On this issue, the Court is guided by the

determination of the Supreme Court in the case of *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)*, in which it was held that that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties' before the Court. The Apex Court proceeded to hold that the determination of any matter will always have a direct effect on the primary/principal parties and that third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court.

41. It was further held that ***“in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court.”***

42. Applying the above binding precedent to the present case, the Court finds that, while it may be plausible that the Interested Party has recruited members from

the Respondent's workforce, it cannot enforce any right regarding the deduction and remittance of trade union dues through the instant proceedings.

43. In the event the Interested Party felt aggrieved by the Respondent's alleged failure to deduct trade union dues from employees who executed check-off forms and remit the same to its specified accounts, the proper course of action would have been to institute a separate claim against the Respondent seeking appropriate relief.

44. It then follows that the submissions by the Interested Party urging the Court to find that the Respondent breached the law by failing to act on the check-off forms, and that the difference between the sum pleaded and the amount of Kshs. 3,396,327.34 pursuant to the consent be remitted to it are irrelevant in the present suit. Such substantive issues should have been pursued through a distinct Claim which may then have been consolidated with the suit herein.

45. The total sum of my consideration is that the Claimant's Claim is allowed in the following terms:

- a) The Respondent is directed to release the trade union dues deducted from the Claimant's members and remit the same to the Claimant's gazetted bank account.

b) The Respondent is further directed to continue deducting trade union dues from employees who are members of the Claimant Union and remit the same to the Claimant's gazetted bank account.

c) In light of the nature of the dispute herein, there will be no orders as to costs.

**DATED, SIGNED and DELIVERED at MERU this 13<sup>th</sup> day of March, 2026.**

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**STELLA RUTTO**

**JUDGE**

**In the presence of:**

For the Claimant	Mr. Jaoko
For the Respondent	Mr. Okinyo
For the Interested Party	Mr. Ongera (Union Rep)
Court assistant	Qabale

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on

15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**  
**JUDGE**