

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

ELRC CAUSE NO. E095 OF 2026

**KENYA UNIVERSITY STAFF
UNION.....CLAIMANT**

VERSUS

**MURANGA UNIVERSITY.....1ST
RESPONDENT**

**PROF DICKSON M NYARIKI.....2ND
RESPONDENT**

RULING

Background

1. The Claimant is a trade union which is registered under *the Labour Relations Act, Cap 233 Laws of Kenya*. The 1st Respondent is a public university in the Republic of Kenya. The 2nd Respondent is the head of the 1st Respondent.
2. The Claimant represents the interests of unionisable employees in the university sector in Kenya. It asserts that it has two hundred and seven (207) members from the 1st Respondent's unionisable employees. The two have both a Recognition and subsisting Collective Bargaining Agreement.
3. The Claimant has instituted the instant suit contending that the Respondents have declined to remit to it trade union dues and agency fees which they have been deducting from the 1st Respondent's employees since August 2024. The Claimant contends that the actions by the Respondents are

- unlawful. It avers that it relies on these funds to execute its mandate for the benefit of its members.
4. The Claimant avers that its members voluntarily took up membership with it in exercise of their constitutional right of freedom of association and the right to join and participate in trade union activities. As such, it contends that it has the legal mandate to represent the aforesaid members in accordance with *the Constitution* and *the Labour Relations Act*.
 5. The Claimant avers that the Respondents' decision to withhold the trade union dues and agency fees amounts to interference with the enjoyment of its (the Claimant's) members' rights as it has impeded its (the Claimant's) lawful operations. As such, it contends that the Respondents' acts are a violation of the members' constitutional rights.
 6. The Claimant avers that the Respondents' actions have undermined its ability to fulfill its (the Claimant's) mandate to its members. It further avers that the impugned actions are an affront to the rule of law governing labour relations and is a threat to its (the Claimant's) institutional integrity and is intended to stir a crisis of confidence in its (the Claimant's) membership.
 7. The Claimant avers that deduction and remittance of trade union dues and agency fees is not an act of benevolence by the Respondents but a statutory and contractual obligation. It contends that section 50 of *the Labour Relations Act*

requires the Respondents to promptly remit all monies deducted from employees on account of trade union dues and agency fees. It contends that refusal to release the funds is a breach of the law and the Collective Bargaining Agreement between the parties.

8. The Claimant contends that it is imperative that the court intervenes to stop the unlawful actions by the Respondents by compelling them to release the withheld funds. It contends that unless the court does so, it (the Claimant) will suffer irreparable harm since it will not be able to fulfil its statutory and contractual obligations to its members. As such, it prays for the various reliefs which are set out in the Memorandum of Claim.
9. Alongside the Memorandum of Claim, the Claimant filed the application dated 2nd February 2026. In the application, the Claimant seeks the following interim reliefs:-
 - a) Spent.
 - b) Spent.
 - c) Spent.
 - d) Spent.
 - e) Pending the hearing and determination of the claim, an order be issued to restrain the Respondents, their agents, representatives or any other person acting on their behalf from further withholding, diverting, misappropriating or failing to remit to the Claimant any union dues deducted from the salaries of its members.

- f) A temporary order be issued directing the 2nd Respondent to immediately remit into the Claimant's designated account all union dues deducted from the salaries of the Claimant's members from August 2024 to date.
 - g) That the court be pleased to issue any other order as may be necessary to give effect to the foregoing orders.
 - h) That the court gives directions on costs of the application.
10. The application is anchored on the grounds which are set out on the face thereof. It is further supported by the affidavit and further affidavit sworn by one Dr. Charles G Mukhwaya. Apart from addressing the legitimacy of the preliminary objection which was filed by the Respondents, the affidavits largely reiterate the contents of the Memorandum of Claim.
 11. In response to the application, the Respondents filed a preliminary objection and an affidavit dated 26th February 2026. They contend that the court lacks jurisdiction to entertain the suit having regard to the Recognition Agreement between the parties and sections 62, 67, 68 and 73 of *the Labour Relations Act*.
 12. The Respondents contend that the Claimant approached the court without first exhausting the dispute resolution procedures under the law and Recognition Agreement. It is their case that these two instruments obligate the parties to negotiate and or refer any dispute between them to conciliation before they can present it to court. As such, they aver that the Claimant approached the court prematurely.

13. The Respondents further contend that although they have been collecting union dues and agency fees from unionisable employees, they have not remitted the money to the Claimant because of a leadership vacuum within the Claimant's branch office. They contend that two of the branch officials left employment following accusations of financial impropriety against them leaving the branch office without proper leadership.
14. The Respondents contend that according to the Recognition Agreement between the parties, the Claimant's officers must be serving employees. As such, they aver that the branch officials whose contracts of service were terminated cannot legitimately preside over the affairs of the Claimant.
15. The Respondents contend that they received a resolution from more than two thirds of the Claimant's members directing them to continue deducting but not to remit their union contributions to the Claimant until the branch leadership issues are addressed through elections. As such, they contend that they are bound to have regard for this resolution.
16. The Respondents contend that although the law requires the 1st Respondent to deduct and remit trade union dues and agency fees to the Claimant, this obligation should be viewed purposively. They contend that the aforesaid requirement does not take away the duty on them to exercise prudence in handling employee funds.

17. The Respondents contend that the funds which have been deducted from employees towards trade union dues and agency fees have been kept safely until the leadership issues in the Claimant's branch office are resolved. Until this is done, they contend that it will be improper for the court to direct them to make the impugned payments to the Claimant.
18. In response, the Claimant reiterates that the Respondents are only agents for purposes of collecting the impugned trade union dues and agency fees. The Claimant contends that the Respondents have an unqualified obligation to pay out all the dues they have collected without questioning how the money will be utilized.
19. The Claimant avers that the Respondents have no right to enter into an arrangement with some of the unionizable employees to withhold release of the impugned funds. As such, it avers that the Respondents' actions are illegal.

Analysis

20. Rule 56 (5) of the *Employment and Labour Relations Court (Procedure) Rules, 2024* provides as follows:-

“Where the Constitution, a written law, collective bargaining agreement, contract of service, policy, or other instrument provides for alternative dispute resolution mechanisms:-

- a) a person being party to a dispute may file a suit and seek appropriate interlocutory relief pending exhaustion of*

- such alternative dispute resolution mechanisms or pending determination of the suit;*
- b) want of exhaustion of such alternative dispute resolution mechanisms shall not operate as a bar to a suit for application for interim orders or alleging unconstitutionality or unlawfulness of the action, omission, decision or other matter in dispute pending such exhaustion; and*
- c) a suit filed prior to exhaustion of such alternative dispute resolution mechanisms may be stayed and not struck out on account of such exhaustion.”*

21. This rule recognizes that notwithstanding that a particular piece of legislation, including *the Constitution*, or an agreement between parties provides for an alternative mechanism for resolving a dispute, the parties to the dispute are still entitled to approach the court by way of a substantive suit particularly if they require some interim reliefs. The effect of this provision is to recognize that existence of alternative mechanisms for resolving an employment or labour dispute does not oust the court’s jurisdiction to entertain the matter.
22. It is a well-established legal principle that a court of law should give provisions which purport to oust its jurisdiction restrictive interpretation. As such, the court must not automatically down its tools merely because there exists

alternative dispute resolution procedures which have not been exhausted.

23. Whilst a court should generally defer to alternative dispute resolution procedures, it is entitled to overlook these mechanisms if there are circumstances which justify this approach. For example, a court will overlook the mechanisms in cases which raise questions relating to alleged breaches of constitutional provisions and the bill of rights (***Akusala Borniface & another v Law Society of Kenya & 12 others; Law Society of Kenya Nairobi Branch (Interested Party) [2021] KEHC 4343 (KLR)***).
24. In the case of ***Karen Blixen Camp Limited v Kenya Hotels and Allied Workers Union [2018] eKLR***, the Court of Appeal observed as follows regarding the procedure under Part VIII of *the Labour Relations Act* which the Respondents have, inter alia, invoked to support their preliminary objection:-

“We agree with the trial court that section 62 (1) is permissive and allows all trade disputes to be reported to the Minister by the parties listed thereunder in the manner prescribed. There is no compulsion for the referral, and it was certainly not the intention of Parliament to confine parties into a straitjacket, place them at the mercy of the Minister, or oust the jurisdiction of the court. At best, it was tailored to enhance good industrial relations between an employer

and an employee and to achieve improved industrial relations between the employer and the trade union representing the employee, as partners in social dialogue.”

25. Based on the aforesaid Court of Appeal decision, it is apparent that the dispute resolution procedure provided for under Part VIII of *the Labour Relations Act* is not mandatory and does not oust the court’s jurisdiction. To that extent, the Respondents’ objection, in so far as it is premised on this provisions of statute, is misguided.
26. The Respondents contend that the Recognition Agreement between the parties binds them to resolve differences between them through negotiations. As such, they contend that the court has no jurisdiction to intervene in the present dispute. With respect, if the intention of the agreement was to preclude the parties from accessing court, that would render it void for attempting to oust the court’s jurisdiction.
27. Underscoring this reality in the context of arbitration agreements which purport to oust the court’s jurisdiction, the Court of Appeal in the case of ***Niazsons (K) Ltd v China Road & Bridge Corporation Kenya [2001] eKLR*** expressed itself as follows:-

“Ordinarily, such an arbitration clause simpliciter does not oust the jurisdiction of the court. But, if it purportedly attempts to do so, it would be contrary to public policy.”

28. A perusal of the Memorandum of Claim shows that the Claimant's contention is that the Respondents' actions amount to a violation of its (the Claimant's) members' constitutional rights under article 41 of *the Constitution*. Based on the earlier discussion in the decision, this contention places the dispute squarely within the purview of this court. A party whose claim raises cogent grievances relating to alleged constitutional violations is entitled to approach the court directly irrespective of the presence of alternative dispute resolution procedures as long as it is apparent that the allegations of constitutional violations are not mere bootstraps to justify avoidance of the alternative dispute resolution procedures (***Akusala Borniface & another v Law Society of Kenya & 12 others; Law Society of Kenya Nairobi Branch (Interested Party)*** (supra)).
29. Having regard to the totality of the views expressed above, the court finds that the Respondents' preliminary objection is devoid of merit. Consequently, it is dismissed.
30. Part VI of *the Labour Relations Act* provides for deduction and remittance of trade union dues and agency fees. Contrary to the contention by the Respondents, these are not trust funds held by a trade union on behalf of its members. They are fees paid by members and unionisable non-members of a trade union to the union for the services it renders to them. They fall in the category of the funds

described as “funds of a trade union” under section 2 of *the Labour Relations Act*. As such, the funds belong to the trade union to be utilized in the manner prescribed by section 39 of the Act.

31. Specifically, section 48 (1) of the Act defines the term “trade union dues” to mean the “regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.” As such, this payment is a fee paid to the union by a member.
32. On the other hand, section 49 of the Act deals with agency fees. These are funds which are deducted from an employee who is unionisable but who is not a member of a trade union and paid to the trade union in return for the benefit the employee draws from a Collective Bargaining Agreement which has been negotiated by the trade union. As such, it is also a fee paid to the trade union by such employee for the services it has rendered.
33. By virtue of the aforesaid two provisions of statute, once a trade union has procured a ministerial order from the Cabinet Secretary of the Ministry of Labour and Social Protection sanctioning payment of trade union dues and agency fees from employees of a particular employer, the employer is obligated to commence deduction of the trade union dues and agency fees from the affected employees within the prescribed timelines. Under section 50 of the Act, the employer is obligated to remit the trade union dues and

agency fees which have been collected to the trade union within prescribed timelines.

34. By virtue of section 48 of the Act, an employee who is a member of a trade union is entitled to stop making payment of trade union dues to a trade union. However, he can only do so by resigning from the trade union. Even then, such employee will still be liable to pay agency fees under section 49 of the Act if he is drawing a benefit from a Collective Bargaining Agreement which has been negotiated by the trade union.
35. The Respondents admit that the 1st Respondent has been collecting trade union dues and agency fees which is payable to the Claimant but has withheld the funds allegedly because of governance concerns relating to the Claimant's branch office. They (the Respondents) assert that they took this decision in exercise of their fiduciary duty to the affected employees.
36. The Respondents assert that they received a resolution from approximately two thirds of the Claimant's members asking the 1st Respondent to deduct but not to remit their trade union dues to the Claimant. They rely on a list of 97 members of the Claimant to support the position they express on the matter. Yet, from the Claimant's pleadings, it contends that its membership with the 1st Respondent stands at 207 members which renders the Respondents'

assertion that the resolution they have was by more than two thirds of the Claimant's members a misstatement.

37. The Respondents do not justify how and why they relied on a petition by 97 individuals to stop remittance of trade union dues for the other lot of employees who comprise the Claimant's 207 members. Similarly, the Respondents do not justify how this petition entitled them to withhold remittance of agency fees from unionisable employees who are not members of the Claimant.
38. Importantly, there is nothing in *the Labour Relations Act* which entitles the Respondents to withhold release of trade union dues and agency fees to the Claimant except where there is evidence of a union member having resigned from the Claimant pursuant to section 48 (6) of the Act or where the Cabinet Secretary has revoked or suspended a ministerial order authorizing payment of the union dues and agency fees under section 50 (2) of the Act. As such, the Respondents' decision to withhold remittance of trade union dues and agency fees to the Claimant has no cogent justification.
39. The *Labour Relations Act* has an elaborate framework to address the Respondents' concerns regarding the possible abuse of the funds which are to be paid to the Claimant. For instance, section 41 of the Act entitles the Registrar of Trade Unions or persons having sufficient interest in the affairs of a trade union to apply for an injunction from court to restrain

the trade union from applying the funds in its possession for purposes other than those which are set out under section 39 thereof. Further, under the aforesaid provision, the court can direct that the funds be deposited with the Public Trustee for safe keeping if it is demonstrated that they are at risk of misuse.

40. Section 42 of the Act obligates every official of a trade union who receives and applies trade union funds to provide a statement of accounts for the funds in terms of the provision. The provision creates an offense for failure to provide accurate accounts.
41. Section 43 of the Act obligates trade unions to file annual returns with the Registrar of Trade Unions detailing, inter alia, the trade unions' assets. Like section 42 above, this section also creates an offense for noncompliance.
42. Section 46 of the Act empowers the Registrar of Trade Unions to ask for a detailed statement of accounts from a trade union at any time. It (the section) creates an offense for noncompliance with the request.
43. Section 47 of the Act empowers the court to order restitution of any property of a trade union which has been misapplied upon a complaint by the Registrar of Trade Unions or a member of the union. In addition, the court is empowered to suspend from office any official who has misapplied union property.

44. These provisions are designed to ensure that trade union funds are not misapplied. And the agencies to ensure compliance are clearly set out in the law. As such, the Respondents have no justification to fail to discharge their statutory duty to remit trade union dues and agency fees to the Claimant under the guise of protecting the dues from possible abuse.
45. The totality of the foregoing demonstrates that the Claimant's grievance against the Respondents presents a *prima facie* case with a chance of success. As such, the court finds that the Claimant has met the first condition for grant of the orders sought.
46. The Claimant contends that the continued non-remittance of the impugned funds threatens enjoyment by its members of the constitutional rights under article 41 of *the Constitution*. These rights undergird the right to collective bargaining.
47. For the Claimant to be able to effectively discharge its mandate to its members with respect to the rights under article 41 of *the Constitution*, it requires to access the impugned funds in order to run its operations. As such, the continued failure by the Respondents to remit the funds threatens enjoyment of these rights, a matter which will occasion immeasurable loss to the Claimant's members. It is not possible to gauge with any degree of certainty the injury and loss which the various employees will suffer as a result of infringement of their article 41 rights owing to the

Claimant's inability to discharge its mandate. As such, the court is satisfied that the Claimant has demonstrated that failure to issue the impugned orders will occasion irreparable harm both to itself and its general membership.

48. The foregoing analysis tilts the balance of convenience in favour of granting the orders sought by the Claimant. As such, the court is of the view that it is more convenient to grant the orders than to deny them.

Determination

49. In the final analysis, the court dismisses the preliminary objection dated 20th February 2026 and allows the application dated 2nd February 2026 in the following terms:-
- a) Pending the hearing and determination of the claim, an order is hereby issued to restrain the Respondents, their agents, representatives or any other person acting on their behalf from further withholding, diverting, misappropriating or failing to remit to the Claimant any union dues deducted from the salaries of its members.
 - b) A temporary order is hereby issued directing the Respondents to immediately remit into the Claimant's designated account all union dues deducted from the salaries of the Claimant's members from August 2024 to date.
 - c) Costs of the application shall abide the outcome of the case.

Dated, signed and delivered on the 16th day of April, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondents

ORDER

In light of the directions issued on 12th 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